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ABSTRACT

This paper compiles results of a State-by-State survey of public school district immunity. The survey sought to discover if (1) school districts in each State have governmental immunity for liability, (2) this immunity applies only to governmental activities or to proprietary activities also, (3) board members and employees have immunity, (4) the immunity was created by the legislature or maintained by court decision, and (5) the immunity is applicable to pupil transportation. The paper notes a growing trend to deny immunity to school districts, particularly with regard to proprietary activities. (Author/JF)

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PUBLIC SCHOOL DISTRICT IMMUNITY STATUS IN THE UNITED STATES

Introduction:

Governmental immunity in the United States originated from the English Common Law Doctrine: "The King can do no wrong". It is axiomatic the English courts abrogated governmental immunity many years ago but it still exists in the majority of the states.

However throughout the country, there is a growing trend, both by the legislative bodies and the courts, that an individual injured due to the negligent or willful act of a school district or the employees of the district should have an equal right of restitution as one injured due to the negligent act of a private enterprise or its employees.

In an effort to determine the immunity status of public school districts in the United States, last November each State Department of Education or Office or Public Instruction was asked the following questions:

1. Do the public school districts in your state have governmental immunity for liability?

2. Does this immunity apply only to governmental activities or does it apply also to any proprietary activities of school districts?

3. Are board members and employees immune?

4. Was the immunity created by the legislature or is it maintained by court decision?

5. Does your immunity apply to pupil transportation?

From the information received from each of 49 states (Hawaii and D.C. not included) we have compiled a correlation of Public School District immunity status. Because of the infrequent but constant change of school district immunity, this booklet is prepared in loose-leaf form and replacing pages will be sent when necessary.

We sincerely appreciate the fine cooperation extended by the staff of the state educational departments and the office of the Attorney Generals. We also want to thank the following people who generously helped to contribute to the source material:

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To summarize, public school districts have governmental immunity in 35 states. In 17 states this immunity is maintained by court decision. The school districts in these states enjoy immunity at the whim of the courts. For over 50 years the Illinois courts provided school district liability immunity. In the Molitore vs Kanland School District case the Illinois Supreme Court, in a landmark decision, stated public school district immunity was against public policy and should be abrogated. The Arizona Supreme Court in the Stone vs Webster decision followed the same course.

Of the 35 states in which governmental immunity exists, 21 also grant proprietary immunity. For instance, in Kansas, a school district leased their football stadium to another district whose team was to play the team of still a third district. During the game the plaintiff was injured as a result of the collapse of a section of the bleachers. The Kansas Supreme Court ruled that at the time of the occurrence, the owner of the school district stadium was engaged in a proprietary activity and not entitled to protection under the Kansas statute that provides immunity for governmental activities only.

In 27 states the immunity status is defined by statute. Of the 27, in 11 states no immunity exists. Of these 11, 8 are defined by statute and the courts have abrogated immunity in 3.

We hope this booklet will be helpful in planning and properly protecting the school district liability insurance exposure.

L. F. Edwards, Jr. CPCU
June 1968
Kemper Insurance Group
Chicago, Illinois 60640

PUBLIC SCHOOL DISTRICT IMMUNITY STAT
IN THE UNITED STATES

	Does Immunity Exist			School Board Members Included		
State	Governmental Activities	Proprietary Activities		as Member of Board	Individually	
Alabama	Yes	No		Yes	Yes	
Alaska	See Page 2					
Arizona	No	No		No	No	
Arkansas	Yes	Yes		Yes	Yes	
California	No	No		See Pages 7 and 9		
Colorado	Yes	No		Yes	No	
Connecticut	Yes	No		See Page 11		
Delaware	Yes	See Page 12		Yes	Yes	
Florida	~~Yes~~	~~Yes~~ See page 13		~~Yes~~	~~No~~	
Georgia	Yes	No		See Page 14		
Idaho	See Page 15			Yes	Yes	
Illinois	No	No		See Page 16		
Indiana	Yes	Yes		See Page 17		
Iowa	No	No		See Page 18		
Kansas	Yes	No		Yes	No	
Kentucky	Yes	Yes		Yes	No	
Louisiana	Yes	Yes		Yes	No	
Maine	~~Yes~~	~~Yes~~		Yes	No	See Pag
Maryland	Yes	Yes		Yes	Yes	See Pag
Massachusetts	Yes	No		Yes	Yes	
Michigan	Yes	No		No	No	See Pag
Minnesota	~~Yes~~	~~Yes~~	See Page 28+28A	~~No~~	~~No~~	
Mississippi	Yes	Yes		Yes	No	
Missouri	Yes	Yes		Yes	Yes	
Montana	No	No		No	No	
Nebraska	Yes	No?	See Page 34	Yes	Yes	
Nevada	No	No		No	No	
New Hampshire	Yes	Yes	See Page 37	No	No	
New Jersey	Yes	Yes		See Page 38		
New Mexico	Yes	Yes		See Pages 40 and 41		
New York	No	No		No	No	See Page
North Carolina	Yes	Yes	See Page 43	Yes	No	
North Dakota	Yes	Yes	See Page 45			
Ohio	Yes	Yes		No	No	
Oklahoma	Yes	Yes		No	No	
Oregon	No	No	See Page 50	No	No	
Pennsylvania	Yes	No		Yes	Yes	
Rhode Island	Yes	Yes	See Page 53	Yes	Yes	
South Carolina	Yes	Yes		No	No	
South Dakota	Yes	Yes		Yes	Yes	
Tennessee	Yes	No		Yes	Yes	
Texas	Yes	Yes		Yes	Yes	
Utah	No	No	See Page 58	No	No	
Vermont	Yes	No		Yes	No	
Virginia	Yes	No		Yes	No	
Washington	No	No		No	No	
West Virginia	Yes	No		Yes	Yes	
Wisconsin	No	No	See Page 70	No	No	
Wyoming	Yes	Yes		Yes	No	

PUBLIC SCHOOL DISTRICT IMMUNITY STATUS IN THE UNITED STATES

School Board Members Included as Member of Board	Individually		Employees Included	Pupil Transportation Included	Immunity Status By Statute	Court Decisions
Yes	Yes		Yes	Yes	X	
No	No		No	No	X	
Yes	Yes		Yes	Yes	X	
See Pages 7 and 9			No	No	X	
Yes	No		No	See Page 10		X
See Page 11				No	X	
Yes	Yes		Yes	No		
~~Yes~~	~~No~~		~~Yes~~	See Page 13	X	
See Page 14			No	Insurance Mandatory	X	
Yes	Yes		Yes	See Page 15	X	
See Page 16			See Page 16	No	X	
See Page 17			See Page 17	See Page 17		X
See Page 18			See Page 18	No	X	
Yes	No		Yes	Yes-May Insure		X
Yes	No		No	Insurance Mandatory		X
Yes	No		No	Yes-May Insure		X
Yes	No	See Page 23	No	Insurance Mandatory	X	
Yes	Yes	See Page 24	No	Yes		X
Yes	Yes		No	See Page 25 Yes		X
No	No	See Page 26	No	No	X	
+28A ~~No~~	~~No~~		~~No~~	No-See Page 28 + 28A	X	
Yes	No		No	No-See Page 29	X	
Yes	Yes		Yes	Yes		X
No	No		No	Insurance Mandatory	X	
Yes	Yes		Yes	Yes		X
No	No		No	Insurance Mandatory		
No	No		No	Yes-May Insure	X	X
See Page 38			See Page 38	Yes-May Insure	X	
See Pages 40 and 41				Yes-May Insure	X	X
No	No	See Page 42	No	No	X	
Yes	No		No	No	X	
						X
No	No		No	Yes-May Insure	X	
No	No		No	See Page 48	X	
No	No		No	No	X	
Yes	Yes		No	See Page 52		X
Yes	Yes		Yes	Yes		X
No	No		No	Yes		X
Yes	Yes		No	See Page 55		X
Yes	Yes		No	Insurance Mandatory	X	
Yes	Yes		No	See Page 57		X
No	No		No	No	X	
Yes	No		No	Insurance Mandatory		X
Yes	No		See Page 63			X
No	No		No	No	X	
Yes	Yes		Yes	See Page 69	X	
No	No		No	See Page 70	X	
Yes	No		No	Yes-See Page 72	X	

ALABAMA - DEPARTMENT OF EDUCATION

School districts have immunity for governmental activities but not proprietary activities. Board members, employees and pupil transportation are included under the immunity statute for governmental activities only.

Chapter 1121, Laws 1969

House Bill Number 1110

Relating to counties having populations of not less than 25,700 nor more than 25,900, according to the most recent federal decennial census; to regulate the insuring of certain public school buildings in such counties, together with the equipment, furniture, fixtures and other property of such buildings; to repeal conflicting laws.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. In all counties having population of not less than 25,700 nor more than 25,900, according to the most recent federal decennial census, the county board of education shall have the authority and is hereby authorized to insure any public school building within its jurisdiction and under its control which may be owned by the state or county or any city in the county, together with the equipment, furniture, fixtures, and other property in any such building, for the insurable value thereof, with insurance companies of its own choosing and shall not be required to insure such property by or through either the State Insurance Fund or the State Department of Finance, any provision of law to the contrary notwithstanding.

Section 2. All laws or parts of laws which conflict with this Act are repealed.

Section 3. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved, September 12, 1969

ALASKA - DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

"It is my opinion the questions you have asked are substantially unresolved in this state."

ARIZONA - DEPARTMENT OF PUBLIC INSTRUCTION
OFFICE OF THE ATTORNEY GENERAL

Arizona Revised Statutes - Title 15 - Education

"A school district shall in the district name sue and be sued."

15-441. Rule making authority; purchase of insurance

a. The board of trustees shall prescribe and enforce rules for the government of the schools, not inconsistent with law or rules prescribed by the state board of education.

b. The board may provide financial protection for its members against damages incurred because of their position as members of the board, through the purchase of surety bonds and public liability and property damage insurance.

15-441.01 Authorization for insurance coverage for students participating in school athletics and activities.

The governing body of any common or high school district, or the county superintendent of schools concerning accommodation schools, may provide or make available insurance coverage or its equivalent for medical or hospital services or both, for student injured while participating in athletic or other school activities under the jurisdiction of, or sponsored or controlled by, the school district. Such services may be secured only by either of the following methods:

1. By obtaining membership in nonprofit corporations which shall defray the cost of the medical services or hospital services, or both.
2. By obtaining group, blanket or individual policies of accident insurance from insurers authorized to transact such business in this state.

The cost of membership in the nonprofit corporation or the insurance premiums may be paid by the school district, or by the court in the case of accommodation schools, or by the student, his parent or guardian, provided that no funds derived from any tax shall be used to pay for such membership or premiums.

15-453. Insurance on school bus operator; authority of board to purchase.

a. The board of trustees may purchase public liability and property damage insurance covering school bus drivers while driving buses.

ARIZONA (Contd.)

b. The governing board of any school district may require the operator of a school bus used for transportation of pupils attending schools in the district to carry public liability insurance in amounts not to exceed twenty thousand dollars for personal injury to any one person, and one hundred thousand dollars for personal injuries arising out of any one accident covering any liability to which the operator may be subject on account of personal injuries to a passenger or other person caused or contributed to by an act of the operator while operating a school bus. If the policy of insurance is filed with and approved by the governing board of the school district, the governing board may increase the compensation otherwise payable to the operator by an amount equal to the cost to the operator of the insurance.

Opinions of the Attorney General

"Based upon the following Section of the Arizona Statutes, School districts may expend public funds to procure liability insurance covering their officers, agents and employees while engaged in governmental or proprietary capacities:

Section 11-261 A.R.S.:

"Counties may expend public funds to procure liability insurance covering their officers, agents, and employees while employed in governmental or proprietary capacities.

Section 15-441 (B) Supp., A.R.S.:

"The board may provide financial protection for its members against damages incurred because of their position as members of the board, through the purchase of surety bonds and public liability and property damage insurance.

We do not believe the statute is sufficiently broad to permit a school district to budget funds for self-insurance.

We are also of the opinion that a school district, the board of trustees, teachers, officers, agents and employees may be insured against tortious acts within the scope of their employment.

While Sec. 15-441 (B) Supp., is not as broad in coverage as Sec. 11-261, A.R.S. both these acts were passed prior to the recent decision of the Supreme Court, Sawaya v Tucson High School District No. 1 281 P. (2) 105, at Page 106 (3-15-55), the school district was held liable for an accident due to a deffective railing around a grandstand in a leased football stadium. The court in adopting the rule of liability stated:

"This seems to be especially true since liability insurance is available to state government and to the subdivisions for the protection of persons who may become injured as a result of a tort committed by an officer, agent or employee of government."

This would indicate the court applied the more liberal statute with reference to liability of counties to school district and by inference it would be entitled to carry the same kind of insurance coverage; otherwise, under the rule in the Stone case it would not have the necessary insurance protection.

Also, under Sections A 1 and A 3, 15-445, A.R.S., the Board of Trustees of School districts shall:

"1. Manage and control the school property within its district.

"3. Rent, furnish, repair and insure the school property of the district."

An insurance policy would be preferable to a bond, as under insurance usually there is no recovery back against the individual insured, while under a bond, the surety claims such a right. We are not cognizant of the needs of the various districts as to amount or type of coverage, but believe a comprehensive general liability policy which would provide blanket liability coverage for the entire operation of a school district generally would meet your requirements, the amount to be governed by your needs and budget limitations.

It is further suggested that you contact your district insurance representative and go over the situation with him in detail as he should be in a position to give competent advice as to the amount and type of coverage, should you desire to protect yourself, the district and employees by insurance."

ARKANSAS - DEPARTMENT OF EDUCATION

School districts have immunity for all activities. Board members, employees and pupil transportation are included in the immunity status.

This is a comparison of the following states:

California	Education Code - Article 2 - Section 1017 Liability Insurance.
Connecticut	Education Law - Section 10-235 - Protection of teachers, employees and board members in damage suits.
Illinois	The School Code - Section 10-21.6 and 10-22.3 Liability Insurance for school board and employees.
Iowa	Senate File 710 Effective 1-1-68 Tort Liability
New Jersey	Education Law - Section 18:5-50.4 - Protection of personnel from financial loss from negligent acts; insurance.
New York	Education Law - Section 3023 - Liability of a board of education, trustees, trustees or board of cooperative education services.

I. Purpose of Statutes

a. To protect and save harmless the described individuals from financial loss (Conn., N.Y. and N.J.) and expense including legal fees and costs (Conn.) Defend and save harmless (Iowa).

b. To insure the described individuals against loss or liability (Illinois, California)

II. Statutes Afford Protection in Case of Loss

a. Arising out of claim, demand suit or judgement or alleged negligence or other act resulting in accidental bodily injury to any person (N.Y.) or damage or destruction to property (Conn. and N.J.)

b. From wrongful or negligent acts (Illinois).

c. Negligent act or omission (California).

d. Alleged act or omission (Iowa).

III. Statutes are Applicable

When such person as herein described is acting in the discharge of his duties, within the scope of his office position or employment, or under the direction of said board of education, or other appropriate agency where applicable, within or without the school building, (California, Connecticut, Ill. Iowa, N.J., and N.Y.)

IV. Statutes Afford Protection to:

a. Any member of the board of education or any teacher* or other employee thereof or any member of its supervisory or administrative staff, and the state board of education, the board of trustees of each state institution and each state agency which employes any teacher, and the managing board of any public school, (Conn.).

*Note: (Conn. and Ill.) The term "teacher" shall include any student doing practice teaching under the direction of a teacher employed by a town board of education, by the state board of education.

b. The board members, all employees including student teachers, or to any agent who is a board member or employee of the board, (Ill.).

c. Any person holding office, position or employment under the jurisdiction of said board of education (N.J.) of said governing board (Iowa).

d. Any teacher, practice or cadet teacher, and member of its supervisory and administrative staff or employee thereof (N.Y.)

e. Board members, officers or employee (California).

V. Statutes Place a Duty On:

The board of education in any school district or other appropriate agency where applicable to obtain insurance with an insurance company.

a. Created by or under the laws of this state (N.J. & N.Y.)

b. Licensed to write such coverage in this state (California Connecticut, Iowa, N.J. and N.Y.).

Or such board may elect to act as self-insurance to maintain the aforesaid protection (N.J.and Conn.).

VI. Special Feature - New York

Such individuals as described in part 4 (d) above must within ten (10) days of the time he is served with any summons, complaint, process, notice demand or pleading, deliver the original or a copy of the same to such board of education, trustee, board of trustees, or board of cooperative services, or such board will be relieved of the duty imposed upon it by section V above.

As you can see from the above, the statutes are fundamentally identical in context affording protection to employees of school boards, when acting within the scope of their authority. One difference is the New York statute is limited to bodily injury, while the other state statutes are either general in nature or specifically mention property damage.

CALIFORNIA - Liability Insurance

1017 (a) The governing board of any school district shall insure against:

(1) The liability, other than a liability which may be insured against under the provisions of Division 4 (commencing with Section 3201) of the Labor Code, of the district for damages for death, injury to person or damage or loss of property; and

(2) The personal liability of the members of the board and of the officers and employees of the district for damages for death, injury to a person, or damage or loss of property caused by the negligent act or omission of the member, officer, or employee when acting within the scope of his office or employment.

(b) The insurance may be written in any insurance company authorized to transact the business of insurance in the State, or in a nonadmitted insurer to the extent and subject to the conditions prescribed by Section 1763 of the Insurance Code.

(c) Nothing in this section is intended to limit or restrict the authority of the district to insure under Part 6 (commencing with Section 989) of Division 3.6 of Title 1 of the Government Code.

1020. Any person, corporation, firm, or public entity, or employee thereof, who gratuitously loans equipment of any description or the services of an employee to a school district shall not be liable, and the school district shall be liable, for damages because of personal injuries to, or death of any person or damage to property resulting from the operation of such equipment or an act or omission of such employee occurring while such equipment or employee is under the supervision and control of the school district.

This section does not apply to any person, corporation, firm, or public entity who gratuitously loans mechanically defective equipment of any description or who gratuitously loans the services of an employee who is not fully qualified to perform such service, and such defect or lack of qualification is the cause of any damage or injury.

An employee whose services are loaned to a school district pursuant to this section remains an employee to his employer for all purposes, including the application of the provisions of the Labor Code relating to workmen's compensation.

For the purposes of this section, "public entity" includes the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, or any other political subdivision or public corporation in this state.

SEC. 2. Section 17157 is added to the Vehicle Code, to read:

17157. If a motor vehicle is gratuitously loaned to a school district, the bailee and not the bailor shall be deemed to be the owner within the provisions of this chapter notwithstanding the terms of any contract, until the bailor retakes possession of the motor vehicle.

COLORADO - DEPARTMENT OF EDUCATION
EDUCATION CODE

School districts have governmental immunity for tort liability.

The immunity applies only to governmental activities.

The governmental immunity extends only to corporate entity and does not protect the individual officer or employee where his negligence is a proximate cause of the injury. Presumably, the immunity would, if necessary, extend to the officers of the school district where there was no individual negligence by them.

The governmental immunity is based on the common law rule and has been confirmed by a decision of the Colorado Supreme Court.

Immunity statute applies to pupil transportation, except to the extent that the doctrine has been limited by Section 123-30-11, Colorado Revised Statutes 1963.

123-30-11. Liability insurance - Each policy of liability insurance hereafter purchased by a school district pursuant to subsections (23) and (24) of section 123-30-10 shall contain a condition to the effect that said insurer or carrier shall not assert the defense of sovereign immunity otherwise available to said school district and school director or employee thereof within the maximum amounts payable thereunder; provided, that the failure to procure any such insurance in an amount sufficient to satisfy the entire claim or claims shall not be construed as creating any liability against the school district or school director or employee.

CONNECTICUT - STATE DEPARTMENT OF EDUCATION

Governmental immunity is still maintained in Connecticut except where set aside by Statute. This theory of law applies to public school districts.

Although there have been very few court cases in which such deliniation is made, I believe it would be safe to generalize that immunity applies only to governmental activities.

There is no inclusion of Board members in the immunity statute as there is no statute as such, but there is what is known as the "save harmless" law which provides for indemnification of school board members and their employees in case of an adverse judgement on account of an alleged negligence. The court has ruled that immunity is not removed, but insurance is provided.

As previously stated immunity is not a matter of statute, but a common law doctrine which has been preserved from British antecedents. It is recognized by the courts, and preserved by the Legislature in that, by means of legislation, immunity is set aside only in particular statutes.

Actually the common law immunity is set aside by statute in the cases of accidents involving school children in transportation. The law there states that governmental activity shall not be considered a defense in the cases on injury in transportation.

DELAWARE - DEPARTMENT OF PUBLIC INSTRUCTION

1. The public school districts in Delaware have governmental immunity for tort liability.

2. This immunity will apply to the governmental activities of the school districts. A definite answer concerning the application of immunity of proprietary activities cannot be made because of a lack of court decisions in special matters.

3. Board members and employees of school districts should be included in the immunity provisions if they are engaged in official business.

4. I have attempted to determine whether the community statute was created by the legislature or by court decision and have been unable to find the answer.

5. The immunity statute would apply to pupil transportation only in those cases where the school district or the State operated the school buses of the transportation system. The immunity statute would not apply to the contractors who provide buses for school transportation.

(Revised October, 1969)

FLORIDA - LAW OFFICES
WICKER, SMITH, PYSZKA, BLOMQUIST & DAVANT
MIAMI

F. S. 234.03 provides that school boards may carry liability insurance to cover buses and other vehicles. The statute further provides the insurance carrier will not be entitled to the governmental immunity defense to the extent of the policy coverage.

F. S. 230.234 provides that school boards are authorized to provide legal services for employees of said boards who may be sued in tort for accidents which occur while employees are on active duty supervising students.

Senate Bill No. 825

An act relating to tort liability; amending chapter 768, Florida Statutes, by adding section 768.15, providing for the waiver of sovereign immunity for the state and its counties, agencies, and instrumentalities; providing certain exceptional circumstances; disallowing punitive damages; specifying venue; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.15, Florida Statutes, is added to read:

768.15 Waiver of immunity. The state, for itself and its counties, agencies, and instrumentalities waives immunity for liability for the torts of officers, employees, or servants committed in the state. The state, its counties, agencies, and instrumentalities shall by liable in the same manner as a private individual but no action may be brought under this act if the claim:

1. Arises out of the performance or the failure to perform a discretionary function;

2. Arises out of a riot, unlawful assembly; public demonstration, mob violence, or civil distrubances;

3. Arises out of the issuance, denial, suspension or revocation of, or by the failure to issue, deny, suspend, or revoke, a permit, license, certificate, approval, order, or similar authorization; or

4. Arises of the collection or assessment of taxes.

Section 2. Punitive damages. Punitive damages shall not be allowed in an action brought under this act.

Section 3. Venue. Actions under this act shall be brought in the county where the cause of action arose.

Section 4. Statute cumulative. The rights and remedies under this act are cumulative to all others.

Section 5. Effective date. This act shall become effective on July 1, 1969 and shall not apply to acts or omissions occurring before that date.

Became a law without the Governor's approval.
Filed in Office Secretary of State June 20, 1969.

Tort Liability-Repeal
Senate Bill No. 1766

An act relating to tort liability; amending chapter 768, Florida Statutes, by repealing section 768.15; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.15, Florida Statutes, is hereby repealed July 1, 1970.

Section 2. This act shall become effective immediately upon becoming law.

Became a law without the Governor's approval.
Filed in Office Secretary of State July 5, 1969.

GEORGIA - DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

The law of Georgia, as most other American jurisdictions, is that a local school board is not liable in tort for injuries incurred by pupils on school property or in the course of their transportation to and from the public schools, and that the members of the board cannot be held personally liable for any loss or injury resulting from an act taken by the board where such act lies within the scope of its authority or official discretion. Ga. Code Ann. 23-1502; Duffee v. Jones, 208 Ga. 639, 645 (1952) Krosner v Harper 90 Ga. App. 128, 135 (1954); McLeod v Pulaski County, 50 Ga. App. 356 (1935); 47 Am. Jur. Schools 57; 78 C.J.S. Schools and School Districts 129 p/ 923; Ops. Atty. Gen. (1957), p. 100 (1954-56) p. 192.

It must be carefully noted, of course, that this shield from liability, which is generally referred to as the doctrine of "sovereign immunity" (see also Ga. Code Ann. 23-1502), is applicable only where the act or conduct causing the loss is one which was taken by the board within the scope of its authority or official discretion. It does not protect a board member where it is such member's own personal and individual negligence which causes the injury rather than an action of the school board. Another exception is the fact that while the doctrine protects the school board and the members of the board from liability where the injury results from ordinary negligence of the board, it would not apply where the action of the board amounts to malicious, willful or wanton misconduct.

While the second question is to some extent answered by my reply to the first inquiry (i.e. that neither the school board nor its members would ordinarily be liable for negligent actions or inactions of the board), I might point out that Ga. Code Ann. 32-429 both authorizes and requires school boards to purchase insurance policies for the protection of school children transported on school buses in an amount to be determined by the local board. Said code section provides:

"The various school boards of the counties, cities and independent school systems employing school buses are hereby authorized and required to cause policies of insurance to be issued insuring the school children riding therein to and from school against bodily injury or death at any time therefrom resulting from an accident or collision in which said buses are involved. The amount of such insurance shall be within the discretion of the respective boards".

IDAHO - DEPARTMENT OF EDUCATION

1. Sovereign immunity is not implied in Idaho state law. It has never been really determined by court action.
2. This question is too illusive a description for me to draw any conclusions and therefore I cannot adequately answer it.
3. Board members are included in the immunity statute. Employees are also included.
4. The immunity was created by the legislature.
5. Immunity statute applies to pupil transportation - for that amount not covered by insurance.

ILLINOIS - OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION

Article 10 - Illinois School Code

Section 10-20.20. PROTECTION FROM SUIT. To indemnify and protect school districts, members of school boards, employees, and student teachers against death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts alleged to have been committed in the scope of employment or under the direction of the board. No agent may be afforded indemnification or protection unless he is a member of a school board, an employee of a board or a student teacher. (Added by L. 1967, H.B. 2350, approved September 5, 1967.)

Section 10-22.3. LIABILITY INSURANCE FOR SCHOOL BOARD MEMBERS, SCHOOL BOARD EMPLOYEES AND STUDENT TEACHERS. To insure against any loss or liability of the school district, members of school boards, employees and student teachers by reason of death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts allegedly committed during the scope of employment or under the direction of the school board. Such insurance shall be carried in a company licensed to write such coverage in this State. (Amended by Act approved August 2, 1965.)

Public Act 76-1836, Laws 1969

Senate Bill Number 800

AN ACT to amend Section 29-9 of "The School Code", approved March 18, 1961, as amended.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Section 29-9 of "The School Code", approved March 18, 1961, as amended, is amended as follows:

Section 29-9. Liability insurance. Any school district, including any non-high school district, which provides transportation for pupils shall insure against any loss or liability of such district, its agents or employees, resulting from or incident to the ownership, maintenance or use of any school bus. Such insurance shall be carried only in companies duly licensed and authorized to write such coverage in this state.

INDIANA - DEPARTMENT OF PUBLIC INSTRUCTION

Article 10 - School Code

Public school districts in Indiana have governmental immunity for tort liability. This principle has been established and upheld by court decisions. In 1941, the state legislature enacted a statute which permits school corporations to purchase liability insurance, but this act in no way modified the common law.

The courts have held that the principle of governmental immunity applies to the proprietary functions of school corporations. If effect, the court said it is impossible to separate the governmental and proprietary functions of a school corporation.

The principle of governmental immunity applies to individual school board members so long as they are acting in a governmental capacity and so long as such actions are free from corrupt motives.

Employees of Indiana public school corporations are not protected by governmental immunity. The 1965 General Assembly passed a permissive save harmless statute for the benefit of school corporation employees.

Governmental immunity extends to pupil transportation as it relates to the school corporation and its officers. In Indiana, a school bus driver is considered a contractor and not an employee; such contractor is liable for his personal acts. The 1941 law permits a school corporation to purchase liability insurance for vehicles which it owns.

IOWA - DEPARTMENT OF PUBLIC INSTRUCTION

As used in this Act, the following terms shall have the following meanings:

1. "Municipality" means city, town, county, township, school district, and any other unit of local government.

2. "Governing body" means the council of a city or town, county board of supervisors, board of township trustees, local school board, and other boards and commissions exercising quasi-legislative, quasi-executive, and quasi-judicial power over territory comprising a municipality.

3. "Tort" means every civil wrong which results in wrongful death or injury to person or injury to property and includes but is not restricted to actions based upon negligence breach of duty, and nuisance.

Except as otherwise provided in this Act, every municipality is subject to liability for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

In any action subject to the provisions of this Act or section three hundred eighty-nine point twelve (389.12) of the Code, an affirmative showing that the injured party had actual knowledge of the existence of the alleged obstruction, disrepair, defect, accumulation, or nuisance at the time of the occurrence of the injury, and a further showing that an alternate safe route was available and known to the injured party, shall constitute a defense to the action.

The liability imposed by section two (2) of this Act shall have no application to any claim enumerated in this section. As to any such claim a municipality shall be liable only to the extent liability may be imposed by the express statute dealing with such claims and, in the absence of such express statute, the municipality shall be immune from liability.

1. Any claim by an employee of the municipality which is covered by the Iowa workmen's compensation law.

2. Any claim in connection with the assessment of collection of taxes.

3. Any claim based upon an act or omission of an officer or employee, exercising due care, in the execution of a statute, ordinance, or officially adopted resolution rule, or regulation of a governing body.

4. Any claim against a municipality as to which the municipality is immune from liability by the provisions of any other statute of where the action based upon such claim has been barred or abated by operation of statute or rule of civil procedure.

IOWA (Contd.)

The remedy against the municipality provided by section two (2) of this Act for injury or loss of property or personal injury or death resulting from any act or omission of an officer or employee in the execution of a statute or ordinance, or officially adopted resolution, rule or regulation of a governing body while acting in the scope of his office or employment shall hereafter be exclusive of any other civil action or proceeding by reason of the same subject matter against the officer or employee whose act or omission gave rise to the claim, or his estate.

Section 7. The governing body of any municipality may purchase a policy of liability insurance insuring against all or any part of liability which might be incurred by such municipality or its officers, employees and agents under the provisions of section two (2) of this Act and may similarly purchase insurance covering torts specified in section four (4) of this Act. The premium costs of such insurance may be levied in excess of any mileage tax limitation imposed by statute. Any independent or autonomous board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance within the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity as to those exceptions listed in section four (4) of this Act to the extent stated in such policy but shall have no further effect on the liability of the municipality beyond the scope of this Act. The existence of any insurance which covers in whole or in part any judgement or award which may be rendered in favor of the plaintiff, or lack of any such insurance, shall not be material in the trial of any action brought against the governing body of any municipality, or their officers, employees or agents and any reference to such insurance, or lack of same, shall be grounds for a mistrial.

Section 8. The governing body shall defend any of its officers and employees, whether elected or appointed and, except in cases of malfeasance in office or willful or wanton neglect of duty, shall save harmless and indemnify such officers and employees against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty. Any independent or autonomous board or commission of a municipality having authority to disburse funds for a particular municipal function without approval of the governing body shall similarly defend, save harmless and indemnify its officers and employees against such tort claims or demands.

Section 14. This Act, shall be in full force and effect on January 1, 1968.

KANSAS - STATE DEPARTMENT OF PUBLIC INSTRUCTION

Public school districts in Kansas have governmental immunity for tort liability.

The immunity extends only to governmental activities.

The school district as a legal entity and quasi-municipal corporation is protected from tortious liability because, as an arm of the state, it has sovereign immunity. This includes the school board acting in its corporate capacity. The members of the board individually, as well as its employees, can be held personally liable for their own active negligence. The doctrine of sovereign immunity does not apply or extend to governmental functions involving nuisances and proprietary functions.

There is no constitutional or legislative enactment (statute) as such providing for sovereign immunity. The doctrine of sovereign immunity came into our law from the common law by judicial decision.

Immunity statute applies to pupil transportation. Transportation of pupils during the school year is considered a function of government, as distinguished from a proprietary act, and the doctrine of sovereign immunity applies. This, of course, has been strengthened by statutory enactment. Opinion 62-32 of the attorney general cites the statute covering school activities. The purchase of such insurance shall not constitute a waiver of the immunity of such school district from any action or suit.

KANSAS (Contd.)

House Bill Number 1216. Section 1. On and after January 1, 1970, the board of education of any school district is authorized and permitted to purchase public liability and property damage insurance for the protection and benefit of said school district and the officers, agents, teachers and employees from liability as a result of any of their acts or omissions arising out of and in the scope of their services for the school district which shall result in damage or injury: Provided, however, The public liability and property damage insurance policy so purchased shall provide coverage to a limit, exclusive of interest and costs of not less than one hundred thousand dollars ($100,000) because of death, bodily injury and/or damage or destruction of property in any one occurrence. The insurance purchased as provided in this act shall be limited to the kinds of insurance hereinbefore set out. Such insurance may be acquired by competitive bids or by negotiation in the discretion of the board of education. In the event competitive bids are taken, the board of education shall purchase insurance only after it has invited sealed proposals for such insurance by advertising once each week for two (2) consecutive weeks in a newspaper having general circulation in the school district. Such insurance shall be purchased from the lowest responsible bidder, but any or all bids may be rejected.

Section 2. The board of education of any school district of this state securing insurance as hereinbefore authorized thereby waives its governmental immunity from liability for any damage by reason of death or injury to persons or property proximately casued by the negligent acts of any officer, teacher or employee of such school district when acting within the scope of his authority or within the course of his employment. Such immunity shall be waived only to the extent of the insurance so obtained.

Section 3. The contract of insurance purchased pursuant to this act must be issued by some insurance company or association authorized to transact such business in the state of Kansas and must by its terms adequately insure such school district, it officers, agents, teachers and employees under standard policies of insurance approved by the state insurance commissioner for the type of coverage provided for in section 1 of this act for any damages by reason of death or injury to person or property proximately caused by the negligent acts of any person acting for or on behalf of said school district within the scope of his authority or within the course of his employment. Any company or association which enters into a contract of insurance as above described with the school board of any school district of this state by such acts waives any defense based upon the governmental immunity of the school district and its officers, agents, teachers and employees.

Section 4. Any person sustaining damages or in the case of death his personal representative may sue the school district as provided in this act for the recovery of such damages in in any court of competent jurisdiction in this state in the county where the school district is located or in the county in which the damage was sustained, and it shall be no defense to any such action that the negligent acts of the officer, agent, teacher or employee was in pursuance of a governmental or propietary function of such school district, if and then only to the extent such political subdivision has insurance coverage as provided in this act.

All actions brought under this act shall be subject to the statute of limitations provided in the code of civil procedure for such actions.

Section 5. Any school district of this state may incur liability pursuant to this act only with respect to a claim arising after such political subdivision has procured liability insurance pursuant to this act and only during the time when such insurance is in force.

Section 6. No part of the pleadings which relate to or allege facts as to the defendant's insurance against liability shall be read or mentioned in the presence of the trial jury in any action brought pursuant in this act. All issues of law or fact with reference to determination of contractual liability and insurance shall be determined by the court, and the jury shall be absent during the motions, agruments, testimony or announcement of findings of fact or conclusions of law with respect thereto.

No plaintiff to an action brought pursuant to this act, or attorney, or witness therefor, shall make any statement, ask any question, read any pleadings, or do any other act in the presence of the trial jury in such case so as to indicate to any member of the jury that the defendant's liability would be covered by insurance, and if such be done, order shall be entered of mistrial.

Section 7. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional clause, paragraph, subsection or section.

Section 8. This act shall take effect and be in force from and after its publication in the statute book. (Approved April 23, 1969.)

House Bill Number 1009. Section 1. K.S.A. 1968 Supp. 72-8404 is hereby amended to read as follows: 72-8404. The board of education of every school district or its contract carrier shall purchase motor vehicle liability insurance and medical payments insurance for the protection and benefit of the school district and the officers, agents and employees for the school district and the students, officers, agents and employees thereof who are transported in or operate school buses owned, operated, maintained or controlled by the school district and of persons while riding in or upon, entering or alighting from such vehicles. The medical payments insurance so purchased shall provide coverage to a limit of not less than two thousand dollars ($2,000) for any one person in any one accident. The motor vehicle liability insurance policy so purchased shall provide coverage to a limit, exclusive of interests and costs, of not less than fifty thousand dollars ($50,000) because of bodily injury to or the death of one person in any one accident and subject of said limit for one person, to a limit of not less than one hundred thousand dollars ($100,000) because of bodily injury to, or death of two or more persons in any one accident, and if the accident has resulted in injury to, or destruction of property to a limit of not less than ten thousand dollars ($10,000) because of injury to, or destruction of property of others in any one accident. The school district shall not be liable in any respect because of providing or furnishing transportation other than as set forth in K.A.S. 1968 Supp. 12-2608, 12-2609, 12-2610 and 12-2612. Insurance authorized to be obtained under authority of this act may be acquired by competitive bids or by negotiation in the discretion of the board of education. In the event competitive bids are taken, the board of education shall purchase insurance only after it has invited sealed proposals for such insurance by advertising once each week for two (2) consecutive weeks in a newspaper having general circulation in the school district. Such insurance shall be purchased from the lowest responsible bidder, but any or all bids may be rejected. Provided, the board of education of any school district, in which all or the greater part of the population of a city having a population of more than two hundred fifty thousand (250,000) is located, shall acquire insurance authorized to be obtained under authority of this act only be competitive bids and only after it has invited sealed proposals for such insurance by advertising once each week for two consecutive weeks in a newspaper having general circulation in the school district, and such insurance shall be purchased from the lowest responsible bidder, but any or all bids may be rejected.

The preceding provisions of this section shall not apply to transportation of students in privately owned motor vehicles with a capacity of less than eight (8) persons, and in lieu of the other provisions of this section the board of education of every school district shall provide by its rules and regulations for appropiate insurance coverage as a condition to payment of transportation allowance for transportation of students in such privately owned vehicles.

Section 2. K.S.A. 1968 Supp. 72-8404 is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book. (Approved April 22, 1969.)

OL&T Liability Insurance
Rule XI "Additional Interests"
Effective February 25, 1970

The Bureau has submitted to the Kansas Insurance Department a filing which amends the Kansas exception pages by inserting the following exception to subdivision 2 (e) of Rule XI "Additional Interests" in the basic manual.

> XI Additional Interests
> 2. Additional Charge. Substitute the following for the "Exception" to subdivision (e):
>
> Exception:
>
> Members of Boards of Education or any Agents, Employees, Teachers, officers or Members of the Supervisory Staff of the School District. Such persons may be included on a blanket basis on policies issued to boards of education without premium charge. The coverage afforded such persons shall be the same as the coverage afforded the board of education and subject to the following additional exclusions:
>
> a) bodily injury to any fellow employee.
>
> b) injury to or destruction of property owned by, rented to or in the care, custody or control of the employer.
>
> If full coverage is desired or if such persons are to be named individually, classify and rate teachers in accordance with classifications "Teacher's Liability . . ." and submit for rating as respects members of boards of education or any agents or members of supervisory staffs or employees thereof.

This filing is being made in compliance with the requirements imposed by the Kansas House Bill 1216.

The filing is proposed to be effective February 25, 1970 in accordance with the following rule of application:

> These changes are applicable to all new and renewal policies written on or after February 25, 1970 and to all policies written before February 25, 1970 which will become effective on or after May 1, 1970. No policy effective prior to February 25, 1970 shall be endorsed or canceled and rewritten to take advantage of, or to avoid the application of these changes

KANSAS (Contd.)

> except at the request of the insured and at the customary short rate charges as of the date of such request but in no event prior to February 25, 1970.

You will be advised of further developments in connection with this filing.

KENTUCKY - DEPARTMENT OF EDUCATION

This is to advise that local boards of education in Kentucky are governmentally immune from tort liability due to negligent acts committed by their officers or employees. This immunity is granted by Court decree and not by an act of the General Assembly. The Kentucky Court of Appeals in a recent decision reaffirmed the doctrine of governmental immunity as it applies to school districts.

The immunity applies to governmental and proprietary acts of the local school district. This governmental immunity does not extend to school board members individually or to school district officers or employees. Neither does the immunity apply to transportation because the Kentucky General Assembly has enacted a statute which requires local school districts to purchase school bus insurance.

LOUISIANA - DEPARTMENT OF EDUCATION

1. The public school districts in Louisiana have governmental immunity for tort liability.
2. All activities, subject to authorization by legislature of suits by insured party to determine liability beyond general immunity.
3. Board members and employees are included in the immunity statute in their "official" capacity. If personally negligent suit against individual may result.
4. The immunity status was created by court decision
5. Immunity applies to pupil transportation. However, legislature has authorized insurance without any waiver of liability or using immunity as defense.

MAINE - DEPARTMENT OF EDUCATION
KERMIT S. NICKERSON, DEPUTY COMMISSIONER

The following observations are presented in response to your letter of November 7, 1969. These comments should not be considered as an official opinion as the state legal advisors maintain that no state issue is involved and that liability of school board members, student teachers and bus drivers is a matter of local import and should be presented to counsel representing local units. I do wish, however, to be helpful recognizing that local units seek advisement and that there should be some consistency in interpretation. The following observations are in general accord with opinions and court cases on the subject.

I. Public School Board Members

A. Liability arising out of and in the course of board membership.

Fundamentally, the operation and control of schools resides in the State Legislature. School board members are public officers whose authority comes from the statutes whereby the Legislature has delegated to administrative units the authority to conduct schools. While the state may not be sued without its consent, it has generally been held in the past that in the absence of any enabling statute, a town or other unit may not be sued. There is a law which gives the right to sue a municipality for injuries resulting from defects in public ways, but no similar law relating to the operation of schools. The amendment adopted in 1969 and made effective October 1, 1969, removes governmental immunity during the period a liability policy is in force and limits damages to the amount of insurance coverage.

A citation from 38 Maine 392 appears to summarize the situation relating to this question very clearly:

"The general principle is established by an almost uniform course of decisions, that a public officer, when acting in good faith, is never to be held liable for an error of judgment in a matter committed to his determination. All he undertakes to do is to discharge his duty to the best of his ability and integrity. That he may err in his judgments or that he may decide differently from what some other person may think would be just, is no part of his official undertaking."

B. Would he be liable for his acts as an individual?

The Maine Supreme Judicial Court in the case of Brooks vs. Jacobs held that an individual may be held liable in a civil action for a ministerial act which resulted in an injury to another because of failure to perform or negligence in the performance of a duty. The word "ministerial" as used here is defined as carrying out an order or actually performing a function rather than exercising judgment or discretion. Most acts of board members would be discretionary rather than ministerial.

2. Employees and Student Teachers

Would the individual employee and student teacher be liable for legal liability arising out of or in the course of his employment?

Courts have long recognized that teachers and other supervisory employees owe some duty to pupils in their care and that while liability was at one time limited to acts of misfeasance (i.e. for action taken which results in an injury), the Supreme Judicial Court of Vermont recently found a teacher's non-feasance (i.e. for action not taken but should have been taken) actionable as a breach of duty. In this connection the court said:

"Granting that a teacher is a public employee, we think that his relationship to the pupils under his care and custody differs from that generally existing between a public employee and a member of the general public. In a limited sense the teacher stands in the parent's place in his relationship to a pupil under his care and charge, and has such a portion of the powers of the parent over the pupil as is necessary to carry out his employment. In such relationship, he owes his pupils the duty of supervision, and if a failure to use due care in such supervision results in injury to the pupil in his charge, (that failure) makes him liable to such pupil. Common sense and fairness must call for the exercise of reasonable care in such duty of supervision, not only in the commission of acts that will not injure the pupil, but in a neglect or failure to act, when such failure to act, injury results. If the teacher is liable for misfeasance we find no sound reason why he should not also be held liable for non-feasance, if his acts or neglect are the direct proximate cause of the injury to the pupil."

This seems to indicate that teachers and other supervisory employees have a responsibility to use due care for the safety of pupils in their charge and that the course of law is moving toward holding those responsible for the safety of pupils liable for injuries to them.

3. Employee Bus Drivers

Would a public school bus driver be liable for legal liability for activities arising out of and in the course of his employment?

Section 832 of Title 20 requires evidence of insurance against bodily injury and property damage for all vehicles conveying school pupils. In the case of publicly-owned vehicles the public agent employs the driver and is required to provide the insurance. Privately-owned vehicles must also be insured and evidence of insurance coverage is a condition for issuance of a registration. The purpose of the insurance is to provide protection of pupils while in the care and custody of bus drivers.

4. Is it possible under the Maine Educational Code, to extend the comprehensive general and automobile liability coverage to board members, all employees, etc?

   This is a question which has been discussed with the Insurance Department and I am advised that such coverage is permissible.

House Bill Number 557

R. S., T. 14, § 157, repealed and replaced. Section 157 of Title 14 of the Revised Statutes, as enacted by Section 8-A of chapter 425 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 157. Government agencies

In all civil actions against the State of Maine or any political sub-division thereof or any quasi-municipal corporation or quasi-governmental agency, whether acting in its governmental or proprietary capacity, the defense of governmental immunity is abolished during the period a policy of insurance is effective covering the liability of such governmental agency. Each policy of insurance issued to such governmental agency shall contain a provision to the effect that the insurer shall be estopped from asserting, as a defense to any claim covered by said policy, that such governmental agency is immune from liability on the ground that it is a governmental agency. The amount of damages in any such case shall not exceed the limits of coverage specified in the policy, and the courts shall abate any verdict in any such action to the extent that it exceeds such policy limit.

Approved, June 24, 1969
Effective, September 30, 1969

MARYLAND - OFFICE OF THE ATTORNEY GENERAL

The Maryland Court of Appeals has on several occasions held school boards to be immune from tort liability for their negligent acts or omissions. A distinction has not been made between proprietary and governmental activities, since the operation of the school system is considered to be a sovereign State function, governmental in nature.

There is no statute with respect to immunity, the doctrine being applied from the common law. Sixteen of the 24 school districts have protected themselves with some form of public liability insurance although the nature and extent of the policies differ. There is likely to be introduced into the State legislature in January a bill encouraging Statewide, uniform public liability insurance.

MASSACHUSETTS - DEPARTMENT OF EDUCATION

School districts in Massachusetts have governmental immunity.

Under the Common Law of our State, there is immunity as far as tort liability is concerned for governmental activities. There is no immunity for proprietary functions.

I haven't heard of a situation where a school committee is involved with a proprietary function. In other words, there is no case in Massachusetts on this matter. The incidental collecting of fees for an athletic event, I am sure would not turn the activity into a proprietary function.

There is no liability as far as the school committee is concerned, and the school committee is a board of public officers whose duties are prescribed by statute and in the exercise of its duties, the members do not act as agents of the town but as public officers in the performance of public duties.

Employees would be liable if they were actually negligent. Chapter 41, Section 100C of the General Laws of Massachusetts provides indemnification of the teacher for a negligent act during the scope of their duties, while employed.

Immunity statute was created by court decisions.

It would be my opinion that immunity would also apply to transportation.

MICHIGAN - DEPARTMENT OF EDUCATION

The Michigan Court of Appeals stated, by way of footnote, in Williams v. Primary School District No.3, 3 Michigan App. 468, 142 N.W. 2d 894 (1966), that Act. No. 170 of the Public acts of 1964, C.L. 1948 691.1401 - 691.1415 M.S.A. 3.996 (101) - 3.996 (115), establishes the rules for determining the liability for negligence of all governmental agencies.

This statute defines "governmental agency" to include the state, political subdivisions, and municipal corporations. "Municipal corporation" is defined to include any city, village, township or charter township, or any combination thereof, when acting jointly. "Political subdivision" is defined to include any municipal corporation, county, township, charter township, school district, port district, or metropolitan district, or any combination thereof, when acting jointly, and any district or authority formed by one or more political subdivisions. The "state" includes the State of Michigan and its agencies, departments, and commissions, as well as every public university of the state.

The statute restores the defense of immunity to all governmental agencies defined therein while engaged in governmental functions except in the following areas: (1) defective maintenance of roads; (2) negligent operation of motor vehicles; and (3) defective maintenance of public buildings. The defense of immunity is not available to any governmental agency when it is engaged in a proprietary function, which is defined as "any activity which is conducted primarily for the purpose of producing a pecuniary profit."

Act No. 170 represents a change by the legislature of the position taken by the Michigan Supreme Court in Sayers v. School District No. 1 366 Michigan 217, 114 N.W. 2d 191 (1962), with respect to the tort liability of school districts. In that case, the court held that a school district was an agency of the State, and as such, clothed with sovereign and complete immunity.

However, while Act No. 170, in general, settles the question of the immunity of the state and its various subdivisions, the liability of their officers and employees is still in need of clarification since the Act makes no reference to their liability or immunity.

MICHIGAN (Contd.)

So long as the Sayers decision remained valid law, the judicial authorities were fairly united on this aspect of liability. The Michigan Court of Appeals held in Picard v. Greisinger, 2 Mich. App. 96, 138 N.W. 2d 508 (1965), that the immunity clothing a school district under the principles of the Sayers case did not except the tortious conduct of employees acting within the course and scope of their employment, nor did it except the tortious conduct of the district and board.

Since enactment of Act No. 170, there have been a few decisions in this area. One is Hirych v. State Fair Commission, 376 Mich. 384, 136 N.W. 2d 910 (1965) in which the Michigan Supreme Court held that, generally, a public officer is not vicariously responsible for the acts of his subordinates. The general rule would appear to be as summarized in 13 Wayne Law Review 237 (1966), by Solomon Bienenfeld, Assistant Attorney General of Michigan, i.e. public officers are not liable for negligently performing acts in which they are empowered to exercise discretion, but are liable, as any other individual, for their own torts.

Therefore, in view of the above discussion, your specific questions may be answered as follows:

1. Public school districts have the defense of governmental immunity from torts occurring while the district is engaged in governmental functions. Exceptions are defective maintenance of roads, negligent operation of motor vehicles, and defective maintenance of public buildings.

2. The defense of governmental immunity applies to governmental functions, with exception, and not to proprietary functions.

3. The present statute governing governmental immunity makes no reference to the liability or immunity of board members or employees. This is an area which might be settled by general principles of law, which for the present, are in question.

4. The present form of governmental immunity from tort liability is the result of legislative enactment, i.e., Act No. 170 of the Public Acts of 1964.

5. The negligent operation of motor vehicles is one of the major areas excepted from governmental immunity for torts arising in the school district's performance of governmental functions.

MINNESOTA - DEPARTMENT OF EDUCATION

School districts in Minnesota are authorized by statutes to purchase immunity insurance for all school district employees and to provide transportation insurance for pupils.

Chapter 826, Laws 1969
Senate Bill No. 1557

Subdivision 3a. A school district shall procure insurance as provided in section 466.06, meeting the requirements of section 466.04, if it is able to obtain insurance and the cost thereof does not exceed $1.50 per pupil per year for the average number of pupils. If, after a good faith attempt to procure such insurance, a school district is unable to do so, and the commissioner of insurance certifies that such insurance is unobtainable, it shall be subject to the provisions of subdivisions 1 and 2. If the school district fails to make a good faith attempt to procure such insurance and the commissioner of insurance does not certify that such insurance is unobtainable, then in that event section 466.12 shall not apply to such a school district and it shall be subject to all of the other applicable provisions of chapter 466.

Section 5. This act is effective on January 1, 1970.

Chapter 466
Tort Liability, Political Subdivisions

466.06. Liability Insurance
466.07. Indemnification
466.12. School Districts and Certain Towns

466.06. LIABILITY INSURANCE. The governing body of any municipality may procure insurance against liability of the municipality and its officers, employees and agents for damages resulting from its torts and those of its officers, employees and agents, including torts specified in Section 3 for which the municipality is immune from liability; and such insurance may provide protection in excess of the limit of liability imposed by Section 4. If the municipality has the authority to levy taxes, the premium costs for such insurance may be levied in excess of any per capita or millage tax limitation imposed by statute or charter. Any independent board or commission in the municipality having authority to disburse funds for a particular municipal function without approval of the governing body may similarly procure liability insurance with respect to the field of its operation. The procurement of such insurance constitutes a waiver of the defense of governmental immunity to the extent of the liability stated in the policy but has no effect on the liability of the municipality beyond the coverage so provided.
(1963, c. 798, §6)

MINNESOTA (Contd.)

466.07. INDEMNIFICATION. Subdivision 1. The governing body of any municipality may defend, save harmless and indemnify any of its officers and employees, whether elective or appointed, against any tort claim or demand whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty. Any independent board of commission of the municipality having authority to disburse funds for a particular function without approval of the governing body may similarly defend, save harmless and indemnify its officers and employees against such tort claims or demands.

Subdivision 2. The provisions of Subdivision 1 do not apply in case of malfeasance in office or willful or wanton neglect of duty.

Subdivision 3. This section does not repeal or modify Minnesota Statutes 1961, Section 471.44, 471.45 and 471.86. (1963, c. 798, §7)

466.12. SCHOOL DISTRICTS AND CERTAIN TOWNS. Subdivision 1. Sections 1 to 11, except as otherwise provided for in this section, do not apply to any school district, however organized, or to a town not exercising the powers of a village under the provisions of Minnesota Statutes 1961, Section 368.01, as amended.

Subdivision 3. A school district or a town not exercising the powers of a village may procure insurance as provided for in section 6, and if a school district or town not exercising the powers of a village procures such insurance it shall otherwise be subject to all terms and provisions of sections 2 to 9 to the extent of the liability coverage afforded. Cancellation or expiration of any liability policy shall restore immunity as herein provided as of the date of such cancellation or expiration.

Subdivision 4. This section is in effect on January 1, 1964, but all of its provisions shall expire on January 1, 1970.
(1963, c. 798, §12; 1965, c. 748, §1)

MISSISSIPPI - DEPARTMENT OF EDUCATION

Public school districts in Mississippi have governmental immunity for tort liability.

This is blanket immunity applying to governmental and proprietary activities of the school districts.

Board members are included in the immunity statute, but they are not immune from personal tort liability, neither are employees.

This immunity in Mississippi is common-law immunity.

In the matter of pupil transportation, governmental immunity is waived by the school district, and a special statute meets this situation.

6336-19. Suits for injuries arising out of operation of school bus-accident contingent fund-

In the event of any accident or injury to any school pupil arising out of the negligent operation of any school bus or other vehicle owned by any county or municipal separate school district, or operated by such county or municipal separate school district, by private contract, for the transportation of pupils to and from the public schools of such county, or any injuries and/or damages arising by reason of negligence in the maintenance, upkeep, repair or mechanical failure of such vehicle, any pupil receiving such injuries or sustaining such damages shall have a right of action against the county or municipal separate school district which operates such vehicles, and such county or municipal separate school district may not plead the defense of governmental immunity in bar to any such action or recovery. Such suit may be tried as other civil actions. Settlements and compromises may be effected with the approval of the chancery court or the chancellor in vacation of such county where the said accident arose, as in other cases. Where the child shall have been killed or died as a result of any such accident, no compromise shall be affected unless approved by the chancery judge in vacation or in the chancery court. It shall be the duty of the attorney for the board of supervisors to advise the county board of education or the board of trustees of the school district, as the case may be, and to represent the county board of education or the board of trustees of the school district in the event suit is brought. In the event counsel is employed by the claimant, his fees, if any, shall be fixed by the chancery court in which a settlement is approved, or by the circuit judge if judgement is taken in the circuit court, such fee to be paid by claimant.

Each county and municipal separate school district operating vehicles for transportation of children shall annually contribute to a fund in the state treasury to be known as the "Accident Contingent Fund" on the basis of five dollars ($5.00) for each school bus or other vehicle used by such county or municipal separate school district for the transportation of children to and from the public schools regardless of whether such vehicle is owned by such county or municipal separate school district or operated under contract with a private owner. Provided, however, that when the state accident contingent fund shall have reached the amount of one hundred thousand dollars ($100,000.00) no such county or municipal separate school district thereafter shall be required to contribute further to the said fund until the fund shall have been depleted to the amount of twenty-five thousand dollars ($25,000.00). The first payment of five dollars ($5.00) per bus shall be made to the state treasurer by each county or municipal separate school district on or before July 1, 1954 and annually thereafter on or before July 1 of each year. Said payments shall be made from the transportation fund of each county or district. In the event any county or separate school district shall fail to pay the sums herein provided for, then same shall be deducted by the state department of education from the next distribution of transportation funds to said county or separate school district, and shall be paid over to the state treasurer. In the event the "Accident Contingent Fund" becomes insufficient to pay claims which have been allowed or final judgements which have been rendered, then the state department of education shall levy an additional assessment of five dollars ($5.00) per bus, or so much thereof as may appear necessary, to be paid into the state treasury by each county or school district; provided that not more than one additional assessment shall be made in any fiscal year. In the event the county or school district shall fail to pay such additional assessment, same shall be deducted or withheld by the state department of education from the next disbursement of transportation funds to such county or school district, and said sum so deducted shall be paid into the said "Accident Contingent Fund".

Compensation on any claim shall be disbursed to such county or municipal separate school district from the accident contingent fund to cover any accident upon the receipt of a certified copy by the circuit clerk of any judgement rendered in such cases, in the event that the same are concluded by litigation; or by a certificate from the chancery clerk of such county in the event that any such claim or claims shall be settled by way of compromise without litigation.

MISSISSIPPI (Contd.)

Provided, however, that no such claim arising from such accident shall exceed the total amount of five thousand dollars ($5,000.00) exclusive of court costs for any one child sustaining such injuries or damages, and provided further that no such claim shall be paid from any other fund other than the accident contingent fund as hereinabove provided. This section shall take effect and be in force from and after July 1, 1954.

MISSOURI - DEPARTMENT OF EDUCATION

Our State Supreme Court has consistently held that political subdivisions such as school districts are not subject to liability in suits for negligence. The most recent ruling upholding the doctrine of immunity from tort liability is cited as 408 S.W. 2nd 50, dated November 14, 1966.

This immunity applies to both governmental and proprietory activities.

To date, our Courts have held both board members and school employees immune from tort liability.

The immunity was created by court decision.

The Court-established immunity applies to pupil transportation.

MONTANA - OFFICE OF THE ATTORNEY GENERAL

There are two statutes in Montana which would seem to make school districts subject to tort liability. One makes every school district a body corporate which "may sue and be sued". Section 75-1803, Revised Codes of Montana, 1947. The other gives the district courts jurisdiction to hear liability suits against the state of Montana where insurance coverage is carried by the state.

Though Section 83-701 was passed in 1959, there have been no cases involving school district tort liability before our Supreme Court. To my knowledge, none have appeared in the district courts. There is a possibility that a school district may be held liable in the future under this section and as a practical matter many school districts purchase liability insurance.

Present Montana law is based on the case of Perkins v. Trask, 95 Mont. 1, 23 P. 2d 982 (1933), which held school districts immune from suit in the absence of a specific statute.

There has been a trend in Montana law to distinguish between the proprietary and governmental functions of government activity. This could result in tort liability for a school district that is engaged in a proprietary activity.

Concerning pupil transportation, Section 75-3406, R.C.M. 1947, makes liability insurance mandatory for school districts which own and operate their own buses.

(Revised April 1970)

NEBRASKA

Legislative Bill 155
Effective January 1, 1970

This act permits political subdivisions of the State of Nebraska to be sued for tort, covering both governmental and proprietary functions.

Political subdivisions shall include villages, cities of all classes, counties, school districts, public power districts and all other units of local government.

Tort claims shall mean any claim against a political subdivision for money only on account of damage to or loss of property or on account of personal injury or death, caused by the negligent or wrongful act or omission of any employee of the political subdivision, while acting within the scope of his office or employment, under the circumstances where the political subdivision, if a private person, would be liable to the claimant for such damage, loss, injury or death, but shall not include any claim accruing before the operative date of this act.

The provisions of this act shall not apply to:

(1) Any claim based upon an act or omission of an employee of a political subdivision, exercising due care, in the execution of a statute, ordinance, or offically adopted resolution, rule, or regulation, whether or not such statute, ordinance, resolution, rule, or regulation be valid;

(2) Any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of the political subdivision or an employee of the political subdivision, whether or not the discretion be abused;

(3) Any claim arising in respect to the assessment or collection of any tax or fee, or the detention of any goods or merchandise by any law enforcement officer;

(4) Any claim caused by the imposition or establishment of a quarantine by the state or a political subdivision, whether such quarantine relates to persons or property;

(5) Any claim arising out of assault, battery, false arrest, false imprisonment, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) Any claim by an employee of the political subdivision which is covered by the Nebraska workmen's compensation law.

NEBRASKA (Contd.)

The governing body of any political subdivision may purchase a policy of liability insurance insuring against all or any part of the liability which might be incurred under this act, and also may purchase insurance covering those claims specifically excepted from the coverage of this act by section 9 of this act. Any independent or autonomous board or commission in the political subdivision having authority to disburse funds for a particular purpose of the subdivision without approval of the governing body also may procure liability insurance within the field of its operation. The procurement of insurance shall constitute a waiver of the defense of governmental immunity as to those exceptions listed in section 9 of this act to the extent, and only to the extent, stated in such policy. The existence or lack of insurance shall not be material in the trial of any suit except to the extent necessary to establish any such waiver. Whenever a claim or suit against a political subdivision is covered by liability insurance, the provisions of the insurance policy on defense and settlement shall be applicable notwithstanding any inconsistent provisions of this act.

NEVADA - DEPARTMENT OF EDUCATION - MR. JAMES ROBERTS, POLITICAL SCIENCE DEPARTMENT, UNIVERSITY OF NEVADA, OCTOBER 1967

The Nevada legislature waived the doctrine of sovereign immunity, effective July 1, 1965. With certain exceptions, to be noted later, the Nevada waiver law does the following things:

1. Waives the immunity from liability of the state and of all political subdivisions of the state.

2. Consents to having the liability of the state and its subdivisions determined by the same rules of law presently applied to civil actions against private individuals and corporation.

3. Limits the amount of a single claim to $25,000.

4. Provides procedures for making claims against the state or its subdivisions.

5. Authorizes the State Board of Examiners and the governing body of political subdivisions to approve claims against their respective units up to $1,000.

6. Allows the state and its political subdivisions to insure themselves and their employees against tort liability suits.

The legislature limited the waiver of liability in several important aspects:

1. No action may be brought against the state, a political subdivision, or an employee which is based on an employee's execution of his legal duties:

   a. If the employee was exercising "due care".
   b. If the employee was exercising a discretionary function.
   c. and even if the statute under which the employee acted is later held unconstitutional by the courts.

2. No action may be brought which is based on:

   a. failure to inspect any building, structure or vehicle, or the construction of any street, public highway or other public work for any hazards, deficiencies or other matters.
   b. failure to discover such hazards, etc.
   c. failure to take action with respect to such hazards, etc.

3. No action may be brought against any peace or fireman unless the act or omission amount to gross negligence or willful and wanton misconduct.

NEVADA (Contd.)

The legislature's position on insurance was not clear. The legislation allows the State to purchase insurance, but no funds were provided for either the purchase of insurance or the payment of claims.

Governmental jurisdictions have basically three choices with respect to the potential liability resulting from the waiver of immunity: purchase of private insurance, self-insurance, or non-insurance. In private insurance, the state would weigh its conception of need against the cost of insurance and purchase the insurance which it feels appropriate; then the insurance company would handle all claims against the state falling within the scope of coverage.

NEW HAMPSHIRE - DEPARTMENT OF EDUCATION

194:3 Powers of Districts. School districts may raise money, as required by law, or, in addition thereto, to procure land for schoolhouse lots and for the enlargement of existing lots; to build, purchase, rent, repair or remove schoolhouses and outbuildings, and buildings to be used for occupancy by teachers in the employ of such school district; to procure insurance against such risks of loss, cost or damage to itself, its employees or its pupils as its school board may determine; to plant and care for shade and ornamental trees upon schoolhouse lots; to provide suitable furniture, books, maps, charts, apparatus and convenience for schools; to purchase vehicles for the transportation of children; to provide for health and sanitation, and to pay debts.

412:3 Procured by Governmental Agency. It shall be lawful for the state or any municipal subdivision thereof, including any county, city, town, school district, supervisory union or other district, to procure the policies of insurance described in section 1 of this chapter. In any action against the state or any municipal subdivision thereof to enforce liability on account of a risk so insured against, the insuring company or state or municipal subdivision thereof, shall not be allowed to plead as a defense immunity from liability for damages resulting from the performance of governmental functions, and its liability shall be determined as in the case of a private corporation. Provided, however, that liability in any such case shall not exceed the limits of coverage specified in the policy of insurance, and the court shall abate any verdict in any such action to the extent that it exceeds such policy limit.

NEW JERSEY - DEPARTMENT OF EDUCATION

"No school district shall be liable for injury to the person from the use of any public ground, buildings or structures, any law to the contrary notwithstanding."

Defense of civil actions against employees; Indeminification; Insurance

Whenever any civil action has been brought against any person holding any office, position or employment under the jurisdiction of any board of education of this State for any act or omission arising out of and in the course of the performance of the duties of such office, position or employment, the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom; and said board of education may arrange for and maintain appropriate insurance to cover all such damages, losses and expenses.

Reimbursement of employee for cost of defending criminal action

Should any criminal action be instituted against any employee for any such act or omission and should such proceeding be dismissed or result in a final disposition in favor of such employee, the board of education shall reimburse him for the cost of defending such proceeding, including reasonable counsel fees and expenses of the original hearing or trial and all appeals.

Costs of criminal action against board member

Whenever a civil or a criminal action has been brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case of a criminal action, such action results in final disposition in favor of such person, the cost of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, shall be borne by the board of education.

The latest development is the New Jersey Supreme Court decision of 2-18-68. A student, Ralph Jackson, who is now seventeen, several years ago lost the sight of his right eye when struck by a missile shot from a rubber band by a fellow student while riding on a school bus in New Shrewsbury.

In a 7-0 decision, the New Jersey Supreme Court reinstated Jackson's suit against the school board. The court stated:

"It must be borne in mind that the relationship between the child and the school authorities is not a voluntary one but it is compelled by law. The child must attend school and is subject to school rules and disciplines.

In turn the school authorities are obligated to take reasonable precautions to protect safety and well being. There, as here, they have provided transportation to and from school in a school bus, their obligation continues during the course of their transportation.

If they negligently fail to discharge their duty and consequential injury results to the child, they should be held accountable in the same manner as other tortfeasors."

It may be assumed this is the beginning of the end of tort-liability immunity for New Jersey public school districts.

NEW MEXICO - DEPARTMENT OF EDUCATION AND CONDITIONAL CONSENT STATUTE

The doctrine of sovereign immunity has been applied to school districts in this jurisdiction.

New Mexico also has a Conditional Consent Statute which has been compiled as Sections 5-6-18 through 22.

Negligence during course of employment - Recovery of damages

The purpose of this act (5-6-18 to 5-6-22) shall be to provide a means for recovery of damages for death, personal injury or property damage, resulting from the employer's or employee's negligency, which occur during the course of employment for state, county, city, school district, district state institution, public agency or public corporation, its officers, deputies, assistants, agency and employees.

Insurance against liability for damages resulting from negligence False arrest or imprisonment - Payment of premium

The state, county, city, school district, district, state institution, public agency or public corporation may insure its officers, deputies, assistants, agents and employees against any liability for damages for death, personal injury or property damage resulting from their negligence or carelessness during the course of their service or employment as part of the consideration for such employment, and for such damages resulting from the dangerous or defective condition of public property, which condition is allegedly due to their negligence or carelessness. The state, county, city, school district, district, state institution, public agency or public corporation may insure its officers, either duly admitted or through a surplus line law, against any liability for injuries or damages resulting from false arrest or false imprisonment. The premium for the insurance is a proper charge against the treasury of the state, county, city, school district, district, public agency or public corporation.

Negligence during course of employment - Suit against agency and persons involved - No judgement against agency unless covered by liability insurance.

Suits may be maintained against the state, county, city, school district, district, state institution, public agency, or public corporation of the state and the persons involved for the negligence of officers, deputies, assistants, agents or such employees in the course of employment; provided, however, no judgement shall run against the state, county, city, school district, district, state institution, public agency or public corporation of the state unless there be liability insurance to cover the amount and cost of such judgement.

NEW MEXICO (Contd.)

Waiver of judgement against state not covered by liability insurance.

The plaintiff shall upon demand by the defendant waive the amount of any judgement recovered against the state which is not covered by liability insurance.

Process served on attorney general constitutes service on department of state agency.

Service of process shall be made as in other civil actions except that in addition to the parties service shall be made on the attorney general of the state of New Mexico and such service shall constitute service on the department of the state agency involved.

NEW YORK - STATE DEPARTMENT OF EDUCATION

Immunity to tort liability has never been applied to school districts in the state of New York.

NORTH CAROLINA - DEPARTMENT OF JUSTICE
NORTH CAROLINA

County and City Boards of Education, unless they have duly waived immunity from tort liability, as authorized by statute, N.C. G.S. 115-53, are not liable in a tort action or proceeding involving a tort except such liability as may be established 300.1 (this exception is discussed in question number 5). Stated another way, waiver of immunity for liability for torts has been left to the respective boards of education and then only to the extent such board has obtained liability insurance to cover negligency or torts.

The immunity applies to all activities of the respective boards of education.

Board members would naturally be covered by the immunity when suit is brought against the board as a corporate body. Assumed in this statement is the fact that you are not here inquiring about the tort or negligency of an individual member of the board - i.e., John Doe, member of X board of education takes a class of students on an excursion and due to Doe's negligence a student is injured. The board of education, unless it has waived immunity, would not be liable for Doe's negligency, Doe would, if proved negligent, be liable as any other individual, for damages arising out of his negligent act. Employees of the board of education - teachers, principals, janitors, etc., would be personally liable for individual acts of negligence just as Doe was. However, the board of education would not ordinarily be liable, unless it has waived its immunity, for the negligent acts of its employees.

By the Legislature G.S. 115-53.

This immunity statute does not apply to pupil transporation G.S. 143-- 200.1 provides that boards of education are liable in tort for the negligence of their employee bus drivers.

Liability insurance and waiver of immunity as to torts of agents, etc.

Any county or city board of education, by securing liability insurance as hereinafter provided, is hereby authorized and empowered to waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent or employee of such board of education when acting within the scope of his authority or within the course of his employment. Such immunity shall be deemed to have been waived by the act of obtaining such insurance, but such immunity is waived only to the extent that said board of education is indemnified by insurance for such negligence or tort.

NORTH CAROLINA (Contd.)

Any contract of insurance purchased pursuant to this section must be issued by a company or corporation duly licensed and authorized to execute insurance contracts in this State and must by its terms adequately insure the county or city board of education against any and all liability for any damages by reason of death or injury to person or property proximately caused by the negligent acts or torts of the agents and employees of a particular school in a county or city administrative unit when acting within the scope of their authority or within the course of their employment. Any company or corporation which enters into a contract of insurance by such waives any defense upon the governmental immunity of such county or city board of education.

Every county or city board of education in this State is authorized and empowered to pay as a necessary expense the lawful premiums for such insurance.

Any person sustaining damages, or in case of death, his personal representative may sue a county or city board of education insured under this section for the recovery of such damages in any court of competent jurisdiction in this State, but only in the county of such board of education; and it shall be no defense to any such action that the negligence or tort complained of was in pursuance of a governmental, municipal or discretionary function of such county or city board of education if, and to the extent, such county or city board of education has insurance coverage as provided by this section.

NORTH DAKOTA - DEPARTMENT OF PUBLIC INSTRUCTION

The 1967 Legislature By Statute, Amended and Reenacted Sections 39-01-08 and 40-43-07 of the North Dakota Century Code as follows:

39-01-08 State and Political Subdivisions Authorized to Carry Insurance on Vehicles - Waiver of Immunity to Extent Only of Insurance Purchased.

(a) The state of North Dakota or any department, agency, bureau, or the employees thereof as well as any county, city, village, or other political subdivision including townships, school and park districts using or operating motor vehicles, are hereby authorized to carry insurance for their own protection of any employee from claims for loss or damage arising out of or by reason of the use or operation such motor vehicle, whether such vehicle at the time the loss or damage in question occurred was being operated in a governmental undertaking or otherwise. If a premium savings will result therefrom, such policies of insurance may be taken out for more than one year, but in no event beyond a period of five years.

(b) If insurance is purchased pursuant to subsection (a) above then the purchaser waives its immunity to suit only to the extent of allowing a determination of liability to the extent of the waiver of the immunity against liability described in (c).

(c) If insurance is purchased pursuant to subsection (a) then the purchaser waives its immunity against liability only to the types of its insurance coverage and only to the extent of the policy limits of such coverage.

(d) If any dispute exists concerning the amount or nature of the insurance coverage, the dispute shall be tried separately before the main trial determining the claims and damages of the claimant.

(e) This statute confers no right for a claimant to sue the insurer directly.

SECTION 2. AMENDMENT. Section 40-43-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-43-07 POLITICAL SUBDIVISIONS AUTHORIZED TO CARRY LIABILITY INSURANCE WAIVER OF IMMUNITY TO EXTENT ONLY OF INSURANCE PURCHASED.

(a) Any political subdivision of the state may insure against claims of loss, damage, or injury against such political subdivision or any department, agency, or function, or officer agent, or employee, of such subdivision.

NORTH DAKOTA (Contd.)

(b) If a political subdivision insures against a claim, then the political subdivision waives its immunity to suit only to the extent of allowing a determination of liability to the extent of the waiver of the immunity against liability described in subsection (c) below.

(c) If a political subdivision insures against a claim, then the political subdivision waives its immunity against liability only to the types of its insurance coverage and only to the extent of the policy limits of such coverage.

(d) If a dispute exists concerning the amount or nature of the insurance coverage, the dispute shall be tried separately before the main trial determining the claims and damages of the claimant.

(e) This statute confers no right for a claimant to sue the insurer directly.

OHIO - DEPARTMENT OF EDUCATION

Public school districts in Ohio have governmental immunity to tort liability. No distinction has been drawn between governmental and proprietary activities of school districts.

Board members and employees are not included in the immunity statute.

The immunity doctrine in Ohio results from both constitutional provisions and court decisions. A school district is a subdivision of the State and Article I, Section 16 of the Constitution provides: "Suits may be filed against the State, in such court and such manner as may be provided by Law." No law provides for the tort suit against the State or subdivision.

The school district enjoys exemption from tort liability in the area of pupil transportation.

OKLAHOMA - DEPARTMENT OF EDUCATION
OFFICE OF THE ATTORNEY GENERAL

School Code

According to the Attorney General's opinions, it is my personal thinking that neither school districts nor boards of education are liable for injury to students or employees.

Opinions of the Attorney General

School districts in Oklahoma are not liable for its torts. We have declined to answer whether or not the driver of a school bus is liable for his torts since this is a civil matter and outside our jurisdiction. Since the school district is not liable for its torts, the board of education of said school district cannot make a settlement of a tort claim and to do so would constitute a gift of public funds.

Attorney General will not give opinion as to personal liability of members of Boards of Education in accidents involving school district vehicles. April 19, 1950.

Insurance policy insuring physical property of school district should be issued in the name of the treasurer of the district January 7, 1953.

Necessary fiduciary bonds for a school district employee may be purchased in form of a blanket bond. December 7, 1954.

District not liable for damages sustained by laborer on building project, and cannot pay hospital expenses of injured employee, and cannot buy insurance therefor. Oct. 9, 1936.

District not liable for accidents occurring in classroom instruction, and cannot pay expenses of injured persons, and cannot buy insurance therefor. March 21, 1945.

Injured athlete's hospitalization and medical expenses cannot be paid by district. December 24, 1958.

Attorney General will not give opinion as to personal liability to school bus driver for damages resulting from operation of school bus. September 16, 1960.

School district is not liable for damages arising from operation of a school bus. September 16, 1960.

School district is immune from liability for injury caused by one pupil to another pupil. 347 P.2d 208.

General Fund money cannot be expended for liability insurance for school district property. January 20, 1964.

School Code

Article IX - Section 127 - Insurance to Pay Damages - Actions Against School District: The board of education of any school district authorized to furnish transportation may purchase insurance for the purpose of paying damages to persons sustaining injuries proximately caused by the operation of motor vehicles used in transporting school children. The operation of said vehicles by school districts however, is hereby declared to be a public governmental function, and no action for damages shall be brought against a school district under the provisions of this Section but may be brought against the insurer, and the amount of the damages recoverable shall be limited in amount to that provided in the contract of insurance between the district and the insurer and shall be collectible from said insurer only. The provisions of this Section shall not be construed as creating any liability whatever against any school district which does not provide said insurance.

OREGON - DEPARTMENT OF EDUCATION
Chapter 627 - Oregon Laws 1967

Section 2. Subject to the limitations of this Act, every public body is liable for its torts and those of its officers employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function.

Section 3. (1) Section 2 of this Act does not apply to:

(a) Any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employee or agent of a public body when such officer, employee or agent is immune from liability.

(b) Any claim for injury to or death of any person covered by the Workmen's Compensation Law.

(c) Any claim in connection with the assessment and collection of taxes.

(d) Any claim based upon an act or omission of an officer, employee or agent, exercising due care, in the execution of a valid or invalied statute, charter, ordinance, resolution or regulation.

(e) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

(f) Any claim against a public body as to which the public body is immune from liability or its liability is limited by the provisions of any other statute.

(2) As to any claim enumerated in this section, a public body shall be liable only in accordance with any other applicable statute.

Section 4 (1) Liability of any public body on any claim within the scope of this Act shall not exceed:

(a) $25,000 when the claim is one for damage to or destruction of property and $50,000 to any claimant in any other case.

(b) $300,000 for any number of claims arising out of a single occurrence.

(2) No award for damages on any such claim shall include punitive damages. The limitation imposed by this section on individual claimants includes damages claimed for loss of services or loss of support arising out of the same tort.

(3) Where the amount awarded to or settled upon multiple claimants exceeds $300,000, any party may apply to any circuit court to apportion to each claimant his proper share of the total amount limited by subsection (1) of this section. The share apportioned each claimant shall be in the proportion that the ratio of the awards and settlements for all claims arising out of the occurrence.

332.435 Any district school board may enter into contracts of insurance for liability covering all activities engaged in by the district for medical and hospital benefits for students engaging in athletic contests and in traffic patrols and may pay the necessary premiums thereon. Failure to procure such insurance shall in no case be construed as negligence or lack of diligence on the part of the district school board or the members thereof.

Section 14. This Act takes effect July 1, 1968.

PENNSYLVANIA - KEMPER PHILADELPHIA LEGAL DEPARTMENT
Mr. H. J. Lotto

As recently as May 1967 our Supreme Court held that School Districts are immune from liability for the tortious acts of its agents and employees while engaged in the exercise of its governmental functions. Two justices dissented (HUSSER V. PITTSBURGH SCHOOL DISTRICT, 425 Pa. 249). However, there is dicta in the case which states that where the activity amounts to a nuisance it is not covered by the immunity doctrine.

The immunity only applies to governmental activities and there is liability for proprietary activities of the school district. The purchase of insurance coverage is not a waiver of immunity from governmental functions.

We have no appellate cases concerning immunity of school board members but there are a few lower court decisions which state that the school board members are not individually liable for the torts of other employees. Employees of the school boards or school districts are liable for their own torts.

The immunity doctrine arose from court decision and despite many attempts to have the appellate courts reverse this doctrine, our Supreme Court has said that this is a matter for the legislature. Whether this will continue is an open question. Our Supreme Court has already abrogated the charitable immunity doctrine and the tendency seems to be towards this type of approach.

The immunity statute applies to pupil transportation assuming that it is in the normal course of its governmental function of having something to do with education. If the bus were used for some proprietary function there would be liability.

RHODE ISLAND - DEPARTMENT OF EDUCATION

There is no state law which specifically establishes this immunity. In general, the principle followed in such matters has been one of sovereign immunity of the State to liability. The school committee, as an agency of the State, has generally been held within such immunity interpretation.

Since we have no specific law nor a body of court cases on which to base a more definitive reply, we would accept the above mentioned principle.

SOUTH CAROLINA - DEPARTMENT OF EDUCATION

1. Public School Districts in South Carolina have governmental immunity to tort liability.
2. This immunity applies to both governmental and proprietary activities of school districts.
3. Board members are not included in the immunity statute, nor are employees.
4. Immunity statute was created by Common Law (Court Decision)
5. Immunity statute applies to pupil transportation.

SOUTH DAKOTA - DEPARTMENT OF PUBLIC INSTRUCTION

1. Public school districts in South Dakota have governmental immunity to tort liability.
2. This immunity applies to both governmental and proprietary activities of school districts.
3. Board members have immunity; employees do not.
4. The immunity is by Supreme Court decisions.
5. The district is immune, the officers are immune, the bus driver is responsible.

TENNESSEE - DEPARTMENT OF EDUCATION

Section 49-2214 of Tennessee Code Annotated reads as follows:

"No school bus shall be operated to transport pupils to and from school unless said school bus is insured for liability and property damage according to rules and regulations of state board of education."

Subsection (4) of Section 49-215 of Tennessee Code Annotated provides that a county board of education shall have the power:

"To permit county school buildings and county school property to be used for public, community or recreational purposes under such rules, regulations and conditions as may be prescribed from time to time by the county board of education. No member of such board or other county school official shall be held liable in damages for any injury to person or property resulting from such use of school buildings or property. The authority hereby conferred shall not extend to the use of such buildings and property for private profit."

Section 49-308 of Tennessee Code Annotated reads as follows:

"No such board of education, whether incorporated or unincorporated, and no member of any such boards of education, or other municipal or county school official, shall be held liable in damages for any injury to person or property resulting from such use of school buildings or property authorized by Section 49-307."

I do not find any Tennessee State Supreme Court decisions on any of the above quoted school laws.

TEXAS - TEXAS EDUCATION AGENCY

Public school districts in Texas do have tort liability immunity. Such immunity is based on numerous court decisions rather than on statutes enacted by the Texas Legislature.

This immunity does apply to all school sponsored activities as well as to those activities of the regular school day program. Pupil transportation, under court decisions to date, is covered.

It is true that each school bus driver must be bonded in an amount of $2,000 and that his surety may be held responsible to this extent for pupil injuries due to the driver's negligence. While I am unable to locate a court case involving a specific judgement, the driver also probably could be sued as an individual in cases of gross negligence.

House Bill 203

AN ACT relating to insurance of officers and employees from liability arising out of the use and operation of motor vehicles owned by the State of Texas or its departments; relating to compensation of employees for purchase of additional personal liability insurance to cover use of state-owned motor vehicles, and declaring an emergency.

BE IT ENACTED BY THE LESIGLATURE OF THE STATE OF TEXAS:

Section 1. The state departments who now own and operate motor vehicles shall have the power and authority to insure the officers and employees from liability arising out of the use, operation and maintenance of automobiles, trucks, tractors and other power equipment used or which may be used in the operation of such department. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some liability insurance company or companies authorized to transact business in the State of Texas. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the Attorney General as to liability.

Section 2. In case said department elects not to so insure its employees against liability as above mentioned:

An employee of the State of Texas, in addition to any compensation provided in the General Appropriations Act, shall receive as compensation any sum of money expended by such employee for automobile liability insurance required of such employee by the department, agency, commission or other branch of the state government for which such employee is employed.

Section 3. The state comptroller shall provide the necessary forms to make such claims which shall require a certification from the head of the department, agency, commission or other branch of the state government that such employee is employed; that as a regular part of such employee's duties such employee is required to operate a state-owned motor vehicle; and that such department, agency, commission or other branch of the state government requires such employee to maintain liability insurance as a prerequisite to the operation of state-owned motor vehicles.

Section 4. Such payments are to be charged against the maintenance fund of the department for which such employee is employed.

Section 5. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts or negligence of the officers or employees of the state.

Section 6. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Section 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house is suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Lieutenant Governor

Speaker of the House

I hereby certify that House Bill Number 203 was passed by the House on May 24, 1969, by the following vote: Yeas 136, Nays 0.

Chief Clerk of the House

I hereby certify that House Bill Number 203 was passed by the Senate on May 29, 1969, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

TEXAS (Contd.)

Approved: ____________________

Date

____

Governor

House Bill 378

AN ACT authorizing the State Highway Commission to insure officers and employees from liability arising out of use, operation and maintenance of equipment; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The State Highway Commission shall have the power and authority to insure the officers and employees of the Texas Highway Department from Liability arising out of the use, operation, and maintenance of equipment, including but not limited to, automobiles, motor trucks, trailers, aircraft, motor graders, rollers, tractors, tractor power mowers, and other power equipment used or which may be used in connection with the laying out, construction, or maintenance of the roads, highways, rest areas, and other public grounds in the State of Texas. Such insurance shall be provided by the purchase of a policy or policies for that purpose from some reliable insurance company or companies authorized to transact such business in this state. All liability insurance so purchased shall be provided on a policy form or forms approved by the State Board of Insurance as to form and by the attorney general as to liability.

Section 2. Nothing herein shall be construed as a waiver of the immunity of the state from liability for the torts or negligence of the officers or employees of the state.

Section 3. The fact that under present law the State Highway Commission has no authority to insure the officers or employees of the Texas Highway Department from liability arising out of the use, operation, and maintenance of equipment creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended, and this Rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

____________________ ____________________

Lieutenant Governor Speaker of the House

I hereby certify that House Bill Number 378 was passed by the House on April 1, 1969, by a non-record vote.

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Chief Clerk of the House

I hereby certify that House Bill Number 378 was passed by the Senate on May 1, 1969, by the following vote: Yeas 29, Nays 0.

Secretary of the Senate

Approved: ____________________
Date

____
Governor

House Bill Number 456

AN ACT to be known and cited as the Texas Tort Claims Act; defining certain terms; making liable for tort claims for personal injury all units of government in Texas and setting certain limits; abolishing certain immunities of the sovereign to suit, and granting permission for such suit; providing for venue in such suits; making this Act cumulative of other legal remedies; applying the laws and statutes of the State of Texas and the Rules of Civil Procedure to actions hereunder; providing for the service of citation; providing for the defense of such suits, permitting the purchase of insurance and declaring the existence thereof inadmissible and not subject to discovery; permitting settlement of claims hereunder and establishing procedure therefor; providing for the collection of judgements; providing that remedies and judgements hereunder constitute a bar under certain circumstances, and that units of government may not, under certain circumstances, require employees to procure liability insurance as a condition of employment; providing for liberal construction hereof; determining certain exceptions to this Act; providing for continued individual immunity; requiring claimants to give notice of their claim except where there is actual notice; providing for payment of claims against the state-supported senior colleges and universities by direct appropriation, except where insurance has been acquired; providing that the Act shall not apply to proprietary functions of municipalities; excluding medical equipment from the definition of "motor-driven equipment"; applying certain duties as to premise liability; making applicable the provisions of the Workmen's Compensation Act to those units of government acquiring workmen's compensation insurance; excluding school districts from the provisions of the Act, except as to motor vehicles; repealing all laws or parts of laws in conflict herewith; providing that if any part hereof is unconstitutional or void, the same shall not affect the remaining portions hereof; providing for an effective date hereof; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. This Act shall be known and cited as the Texas Tort Claims Act.

Section 2. The following words and phrases as used in this Act unless a different meaning if plainly required by the context shall have the following meanings:

(1) "Unit of government" or "units of government" shall mean the State of Texas and all of the several agencies of government which collectively constitute the government of the State of Texas, specifically including, but not to the exclusion of, other agencies bearing difference designations, all departments, bureaus, boards, commissions, offices, agencies, councils and courts; all political subdivisions, all cities, counties, school districts, levee improvement districts, drainage districts, irrigation districts, water improvement districts, water control and improvement districts, water control and preservation districts, fresh water supply districts, navigation districts, conservation and reclamation districts, soil conservation districts, river authorities, and junior college districts; and all institutions, agencies and organs of government whose status and authority is derived either from the Constitution of the State of Texas or from laws passed by the Legislature pursuant to such Constitution. Provided, however, no new unit or units of government are hereby created.

(2) "Scope of employment" or "scope of office" shall mean that the officer, agent or employee was acting on behalf of a governmental unit in the performance of the duties of his office or employment or was in or about the performance of tasks lawfully assigned to him by competent authority.

(3) "Officer, agent or employee" shall mean every person who is in the paid service of any unit of government by competent authority, whether full or part-time, whether elective or appointive, and whether supervisory or nonsupervisory, it being the intent of the Legislature that this Act should apply to every person in such service of a unit of government, save and except as herein provided. Such definition, however, shall not include an independent contractor or an agent or employee of an independent contractor, or any person performing tasks the details of which the unit of government does not have the legal right to control.

Section 3. Each unit of government in the state shall be liable for money damages for personal injuries or death when proximately caused by the negligence or wrongful act or omission of any officer or employee acting within the scope of his employment or office arising from the operation or use of a motor-driven vehicle, other than motor-driven equipment used in connection with the operation of floodgates or water release equipment by river authorities created under the laws of this state, under circumstances where such officer or employee would be personally liable to the claimant in accordance with the law of this state, or death or personal injuries so caused from some condition or some use of tangible property, real or personal, under circumstances where such unit of government, if a private person, would be liable to the claimant in accordance with the law of this state. Such liability is subject to the exceptions contained herein, and it shall not extend to punitive or exemplary damages. Liability hereunder shall be limited to $100,000 per person and $300,000 for any single occurrence for bodily injury or death.

Section 4. To the extent of such liability created by Section 3, immunity of the sovereign to suit, as heretofore recognized and practiced in the State of Texas with reference to units of government, is hereby expressly waived and abolished, and permission is hereby granted by the Legislature to all claimants to bring suit against the State of Texas, or any and all other units of government covered by this Act, for all claims arising hereunder.

Section 5. All cases arising under the provisions of this Act shall be instituted in the county in which the cause of action or a part thereof arises.

Section 6. This Act shall be cumulative in its legal affect and not in lieu of any and all other legal remedies which the injured person may pursue.

Section 7. The laws and statutes of the State of Texas and the Rules of Civil Procedure, as promulgated and adopted by the Supreme Court of Texas, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions brought under the provisions of this Act.

Section 8. Suits instituted pursuant to the provisions of this Act shall name as defendant the unit of government against which liability is sought to be established. In suits against the state citation shall be served on the Secretary of State. In suits against other units of government citation shall be served in the manner prescribed by law for other civil cases. If no method is prescribed by law, then service may be had on the administrative head of the unit of government being sued, if available, and if not, the court in which the suit is pending may authorize service in such manner as may be calculated to afford the unit of government a fair opportunity to answer and defend the suit.

Section 9. The Attorney General of Texas shall defend all actions brought under the provisions of this Act against any unit of government whose authority and jurisdiction is coextensive with the geographical limits of the State of Texas. All units of government whose area of jurisdiction is less than the entire State of Texas shall employ their own counsel in accordance with the organic act under which such unit of government is operating; provided, however, that all units of government are hereby expressly authorized to purchase policies of insurance providing protection for such units of government, their officer, agents and employees against claims brought under the provisions of this Act, and when they have acquired such insurance, they are further authorized to relinquish to the company providing such insurance coverage the right to investigate, defend, compromise and settle any such claim. In the case of suits defended by the Attorney General, he may be fully assisted by counsel provided by insurance carrier. Neither the existence or amount of insurance shall ever be admissible in evidence in the trial of any case hereunder, nor shall the same be subject to discovery.

Section 10. Any and all causes of action brought under the provisions of this Act may be settled and compromised by the unit of government involved when, in the judgement of the Governor, in the case of the state, and in the judgement of the governing body of the unit of government in other cases, such compromise would be to the best interests of such government. It is specifically provided, however, that such approval shall not be required in those instances where insurance has been procured under the provisions of Section 9 hereof.

Section 11. Judgements recovered against units of government pursuant to the provisions of this Act shall be enforced in the same manner and to the same extent as judgements are now enforced against such units of government under the statutes and law of Texas; and no additional methods of collecting judgements are granted by this Act. Provided, however, if the judgement is obtained against a unit of government that has procured a contract or policy of liability or indemnity insurance protection, the holder of the judgement may use such methods of collecting said judgement as are provided by the policy or contract and statutes and laws of Texas to the extent of the limits of coverage provided therein. It is expressly provided, however, that judgements under this Act becoming final during any fiscal year need not be paid by such unit of government until the following fiscal year except to the extent that they may be payable by an insurance carrier. For the payment of any final judgement obtained under the provisions of this Act, a unit of government not fully covered by liability insurance is hereby authorized to levy an ad valorem tax, the rate of which, if found by the unit of government to be necessary, may exceed any legal limit otherwise applicable except as may be imposed by the Constitution of the State of Texas. In the event that judgements arising under the provisions of this Act become final against a unit of government in any one fiscal year in an aggregate amount, exclusive of insurance coverage, if any, in excess of one percent of the budgeted tax funds, exclusive of general obligation debt service requirements, of such unit of government for such fiscal year, then such unit of government may pay such judgements over a period of not more than five years in equal annual installments and shall pay interest on the unpaid balance at the rate provided by law.

Section 12. (a) The judgement or settlement in an action or claim under this Act shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of a unit of government whose act or omission gave rise to the claim.

(b) The State or a political subdivision may not require any employee to purchase liability insurance as a condition of his employment where the State or political subdivision is insured by a policy of liability insurance.

Section 13. The provisions of this Act shall be liberally construed to achieve the purposes hereof.

Section 14. The provisions of this Act shall not apply to:

(1) Any claim based upon an act or omission which occurred prior to the effective date of this Act.

(2) Any claim based upon an act or omission of the Legislature, or any member thereof acting in his official capacity, or to the legislative functions of any unit of government subject to the provisions hereof.

(3) Any claim based upon an act or omission of any of the courts of the State of Texas, or any member thereof acting in his official capacity, or to the judicial functions of any unit of government subject to the provisions hereof.

(4) Any claim based upon an act or omission of an officer, agent or employee of any unit of government in the execution of the lawful orders of any court.

(5) Any claim arising in connection with the assessment or collection of taxes by any unit of government.

(6) Any claim arising out of the activities of the National Guard, the State Militia, or the Texas State Guard, when on active duty pursuant to lawful orders of competent authority.

(7) Any claim based upon the failure of a unit of government to perform any act which said unit of government is not required by law to perform. If the law leaves the performance or nonperformance of an act to the discretion of the unit of government, its decision not to do the act, or its failure to make a decision thereon, shall not form the basis for a claim under this Act.

(8) Any claim arising out of the action of an officer, agent or employee while responding to emergency calls or reacting to emergency situations when such action is in compliance with the laws and ordinances applicable to emergency action.

(9) Any claim based on an injury or death connected with any act or omission arising out of civil disobedience, riot, insurrection or rebellion or arising out of the failure to provide, or the method of providing, police or fire protection.

(10) Any claim arising out of assault, battery, false imprisonment, or any other intentional tort including, but not limited to, disciplinary action by school authorities.

(11) Any claim based upon the theory of attractive nuisance.

(12) Any claim arising from the absence, condition, or malfunction of any traffic or road sign, signal, or warning device unless such absence, condition, or malfunction shall not be corrected by the governmental unit responsible within a reasonable time after notice, or any claim arising from the removal or destruction of such signs, signals or devices by third parties except on failure of the unit of government to correct the same within such reasonable time, after actual notice. Nothing herein shall give rise to liability arising from the failure of any unit of government to initially place any of the above signs, signals, or devices when such failure is the result of discretionary actions of said governmental unit. The signs, signals and warning devices enumerated above are those used in connection with hazards normally connected with the use of the roadway, and this section shall not apply to the duty to warn of special defects such as excavations or roadway obstructions.

Section 15. Notwithstanding any provision hereof, the individual immunity of public officers, agents or employees of government from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized.

Section 16. Except where there is actual notice on the part of the governmental unit that death has occurred or that the claimant has received some injury, any person making a claim hereunder shall give notice of the same to the governmental unit against which such claim is made, reasonably describing the injury claimed and the time, manner and place of the incident from which it arose, within six months from the date of the incident. Provided, however, except where there is such actual notice, charter and ordinance provisions of cities requiring notice within a shorter period permitted by law are hereby expressly ratified and approved.

Section 17. No claim or judgement against a state-supported senior college or university, under this Act, shall be payable except by a direct appropriation made by the Legislature for the purpose of satisfying claims and/or judgements, except in the event insurance has been acquired as provided in Section 9, in which case the claimant is entitled to payment to the extent of such coverage as in other cases.

Section 18. (a) This Act shall not apply to any proprietary functions of a municipality. The term "motor-driven equipment" as used herein shall not be construed so as to include medical equipment, such as, but not limited to iron lungs, located in hospitals.

(b) As to premise defects, the unit of government shall owe to any claimant only the duty owed by private persons to a licensee on private property, unless payment has been made by the claimant for the use of the premises. Provided, however, that the limitation of duty contained in this subsection shall not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets, nor shall it apply to any such duty to warn of the absence, condition or malfunction of traffic signs, signals or warning devices as is required in Section 14 (12) hereof.

Section 19. Any governmental unit carrying Workmen's Compensation Insurance or accepting the provisions of the Workmen's Compensation Act of the State of Texas shall be entitled to all of the privileges and immunities granted by the Workmen's Compensation Act of the State of Texas to private persons and corporations.

Section 19A. The provisions of this Act shall not apply to school districts except as to motor vehicles.

Section 20. All laws or parts of law, and all enactments, rules and regulations or any and all units of government, and all organic laws of such units of government, in conflict herewith are hereby repealed, annulled and voided, to the extent of such conflict.

Section 21. In the event any section, subsection, paragraph, sentence or clause of this Act shall be declared unconstitutional or void, the validity of the remainder of this Act shall not be affected or impaired thereby; and it is hereby declared to be the policy and intent of the Legislature to enact the valid portions of this Act, notwithstanding the invalid portions, if any.

Section 22. This Act shall be effective from and after January 1, 1970.

Section 23. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each house be suspended and this Rule is hereby suspended.

House Vote: viva voce

Approved, May 22, 1969

Effective 90 days after adjournment

Senate Vote: viva voce

UTAH GOVERNMENTAL IMMUNITY ACT

Section 3. Except as may be otherwise provided in this act, all governmental entities shall be immune from suit for any injury which may result from the activities of said entities wherein said entity is engaged in the exercise and discharge of a governmental function.

Section 4. Nothing contained in this act, unless specifically provided, is to be construed as an admission or denial of liability or responsibility in so far as governmental entities are concerned. Wherein immunity from suit is waived by this act, consent to be sued is granted and liability of the entity shall be determined as if the entity were a private person.

Section 5. Immunity from suit of all governmental entities is waived as to any contractual obligation.

Section 6. Immunity from suit of all governmental entities is waived for the recovery of any property real or personal or for the possession thereof or to quiet title thereto, or to foreclose mortgages or other liens thereon or to determine any adverse claim thereon, or secure any adjudication touching any mortgage or other lien said entity may have or claim on the property involved.

Section 7. Immunity from suit of all governmental entities is waived for injury resulting from the negligent operation by any employee of a motor vehicle or other equipment while in the scope of his employment; provided, however, that this section shall not apply to the operation of emergency vehicles as defined by law and while driven in accordance with the requirements of section 41-6-14, Utah code annotated 1953, as amended by chapter 86, laws of Utah, 1961.

Section 8. Immunity from suit of all governmental entities is waived for any injury caused by a defective, unsafe, or dangerous condition of any highway, road, street, alley, crosswalk, sidewalk, culvert, tunnel, bridge, viaduct or other structure located thereon.

Section 9. Immunity from suit of all governmental entities is waived for any injury caused from a dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement. Immunity is not waived for latent defective conditions.

Section 10. Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of his employment except if the injury:

(1) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused, or

(2) arises out of assult, battery, false imprisonment, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of rights of privacy, or civil rights, or

(3) arises out of the issuance, denial, suspension, or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit license, certificate, approval order, or similar authorization, or

(4) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property, or

(5) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause, or

(6) arises out of a misrepresentation by said employee whether or not such is negligent or intentional, or

(7) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances, or

(8) arises out of or in connection with the collection of and assessment of taxes, or

(9) arises out of the activities of the Utah national guard, or

(10) arises out of the incarceration of any person in any state prison, county or city jail or other place of legal confinement, or

(11) arises from any natural condition on state lands or the result of any activity authorized by the state land board.

Section 26. Any political subdivisions make contributions to a joint reserve fund, for the purpose of making payment of claims against the cooperating subdivisions when they become payable pursuant to this act, or for the purpose of purchasing liability insurance to protect the cooperating subdivisions from any or all risks created by this act.

Section 28. Any governmental entity within the state of Utah may purchase insurance against any risk which may arise as a result of the application of this act.

UTAH (Contd.)

Section 29. Every policy or contract of insurance purchased by a governmental entity as permitted under the provisions of this chapter shall provide:

(a) In respect to bodily injury liability that the insurance carrier shall pay on behalf of the insured governmental entity all sums which the insured would in the absence of the defense of governmental immunity be legally obligated to pay as damages because of bodily injury, sickness or disease, including death resulting therefrom, sustained by any person, caused by accident, and arising out of the ownership, maintenance and use of automobiles, or arising out of the ownership maintenance or use of premises, and all operations necessary or incidental thereto, or in respect to other operations and caused by accident subject to a limit, exclusive of interest and costs, of not less than $100,000 because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than $300,000, because of bodily injury or death of two or more persons in any one accident.

(b) In respect to property damage liability that the insurance carrier shall pay on behalf of the insured governmental entity all sums which the insured would in the absence of the defense of governmental immunity be legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident, and arising out of the ownership, maintenance and use of automobiles, or arising out of the ownership, maintenance or use of premises, and all operations necessary or incidental thereto, or in respect to other operations and caused by accident to a limit of not less than $50,000 because of injury to or destruction of property of others in any one accident.

Section 30. Every contract or policy of insurance purchased under the terms of this act for any or all risks created by this act shall include a provision or endorsement by which the insurer agrees not to assert the defense of sovereign immunity, and to pay all sums for which it would otherwise be liable under its contract or policy of insurance.

Section 31. Any insurance policy, rider or endorsement hereafter issued and purchased to insure against any risk which may arise as a result of the application of this act, which contains any condition or provision not in compliance with the requirements of the act, shall not be rendered invalid thereby, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider or endorsement been in full compliance with this act, provided the policy is otherwise valid.

UTAH (Contd.)

Section 32. No contract or policy of insurance may be purchased under this chapter or renewed under this act except upon public bid to be let to the lowest and best bidder.

Section 33. A governmental entity may insure any or all of its employees against all or any part of his liability for injury or damage resulting from a negligent act or omission in the scope of his employment regardless of whether or not said entity is immune from suit for said act or omission, and any expenditure for such insurance is herewith declared to be for a public purpose.

Section 34. If any judgement or award against a governmental entity under sections 7, 8, 9 and 10 of this act exceeds the minimum amounts for bodily injury and property damage liability specified in section 29 of this act, the court shall reduce the amount of said judgement or award to a sum equal to said minimum requirements in which event the court shall reduce the amount of said judgement or award to a sum equal to the applicable limits provided in the insurance policy.

Section 35. If any section, part or parts of this act shall be held to be unconstitutional, such unconstitutionality shall not affect the validity of the remainder of this act.

Section 36. All other acts or statutes in conflict with provisions of this act are repealed as of the effective date of this act.

Section 37. This act shall take effect on July 1, 1966, and shall apply only to claims and actions arising after said date.

VERMONT - OFFICE OF THE ATTORNEY GENERAL

Public school districts in our state have governmental immunity from tort liability but this immunity only extends to the governmental activities of the district. See Farmer vs Poultney School District, 113 VT. 147 (1943), South Burlington vs American Fidelity, 125 Vt. 348 (1965). This is the common law. There is no statute specifically granting governmental immunity.

However, under 29 VSA Section 1403 sovereign immunity is waived to the extent that a municipality purchases insurance as authorized by 24 VSA section 1092. 23 VSA section 921 requires school directors to insure school buses and motor vehicles used to transport pupils. I would think the compulsory requirement of insurance for pupil transportation abrogates sovereign immunity to the extent of the insurance.

Eastman vs Williams 124 Vt. 445 (1964) held that a school teacher was a municipal employee and was liable for her negligent act in supervising a school playground whether the injury occurred through misfeasance or nonfeasance. I would think this principle would apply to school board members.

Act 123, Laws 1969

Senate Bill Number 33

AN ACT to add 16 V.S.A. Section 1756 relating to protection of school directors, teachers, employees and board members in damage suits.

It is hereby enacted by the General Assembly of the State of Vermont:

Section 1. 16 V.S.A. Section 1756 is added to read:

Section 1756. Protection of School Directors, Teachers, Employees and Board Members in Damage Suits

(a) A town, city, incorporated or union school district and a supervisory union, shall indemnify and save harmless to the extent of the policy limits provided in section (b), the school district and any member of its executive, supervisory or administrative staff, including without limitation members of the board of school directors of the district, from financial loss and expense, including reasonable legal fees and costs, if any, arising out of any claim, demand, suit or judgement by reason of alleged negligence or other act resulting in accidental *injury to a person or accidental* damage to or destruction of property, within or without the school building, provided such indemnified person, at the time of the accident resulting in such injury, damage or destruction, was acting in the discharge of his duties within the scope of his employment or under the direction of the board of school directors or the supervisory union board of directors as the case may be.

(b) Each board of school directors or supervisory union board of directors shall insure against the liability imposed upon it by this section in any insurance company organized in this state or in any insurance company of another state authorized by law to write such insurance in this state, with minimum coverage in the form of a comprehensive general liability policy including the employees as additional insured and with minimum limits of not less than $100,000.00 per person and $300,000.00 per occurrence for bodily injury and $50,000.00 per occurrence for property damage.

(c) Each board of school directors or supervisory union board of directors required to insure against the liability imposed upon it by this section shall furnish proof of insurance with the minimum limits herein prescribed to the commissioner of education and such proof shall be evidence of the insuring against the liability and property damage required by this section. In the event of cancellation, thirty (30) days notice of cancellation is to be given to the commissioner of education.

Approved, April 23, 1969

VIRGINIA LAW OFFICES - Browder, Russell, Little and Morris, Richmond

In Virginia public school districts and school boards have sovereign immunity from tort liability in the absence of a statute imposing liability, provided the conduct complained of arises out of a governmental rather than a proprietary capacity.

In the above cited case the school board had leased its auditorium for a concert and the person who paid admission to the concert fell on an alleged negligently maintained aisle.

The Court affirmed the sustaining of a demurrer to the action finding first that there was no statute which removed the bar of immunity and likewise found same to be a governmental function, stating:

"In the determination of whether a particular act, function, or activity pertaining to public schools or institutions of higher learning is governmental or proprietary in character, the courts have generally applied the test as to whether it tends to promote the cause of public education, and in the general application of the test, it may be generally stated that the courts have been very liberal..."

It is felt that the immunity granted to the school board or school districts is based upon common law application, as it is not set forth in any statute, but rather the exceptions to the general rule are created by statute.

The immunity does not apply to pupil transportation. Virginia Code Ann. 22-284 - 294 sets forth the requirements of each school unit to carry liability insurance in certain amounts protecting the pupils carried and members of the public in general. It is also noted that the guest statute wherein a guest in a vehicle without payment must prove gross negligence is not applicable to persons on school vehicles.

In 22-290 it provides that the school board, which would be the individual members, would be subject to action up to but not beyond the limits of the insurance and that in no case would any member of the school board be liable personally if he was acting in his capacity as a school trustee solely.

We assume that this means that where in suing the school board it is necessary to name all members thereof that they would not be personally liable for any such debt, as they were not the actors bringing about the negligent act.

It is felt that school board members sued merely as the persons comprising the entity of the school board would be within the immunity, but the immunity would not extend to them or to employees of the school board if they themselves were guilty of negligence causing injury to another.

This subject is not free from doubt due to language in the case of Sayers vs. Bullar, 180 Va. 222, wherein it is stated that:

"Our conclusion is that the immunity of the state from actions of tort extends to state agents and employees where they are acting legally and within the scope of their employment, but if they exceed their authority and go beyond the sphere of their employment, or if they step aside from it, they do not enjoy such immunity when they are sued by a party who has suffered injury by their negligence."

In fact, this language does not make much sense as no one needs any immunity when they are "acting legally and within the scope of their employment", and it is our feeling that the courts have not followed this decision.

This has been the trend in our lower courts throughout the state also.

Thus, it would be our opinion that where the employees or other board members were driving vehicles in the performance of their duties or were engaged in any other type of act within the course of their employment and acted negligently that they would be liable for their torts.

CODE OF VIRGINIA - ARTICLE 2- SCHOOL BUS INSURANCE

22-284 Compliance with article prerequisite to receiving State school funds.

No county, city or other public school unit (sometimes herein referred to as "localities"), in which any school pupils or personnel are transported at public expense to or from any public school supported in whole or in part by State funds, in any vehicle owned or operated by, or owned or operated by any person under contract with, the locality or its school board shall receive any State school funds, unless it complies with all applicable requirements of this article and full compliance therewith and satisfactory evidence to the Superintendent of Public Instruction of the effectuation of all requisite insurance are expressly made conditions precedent to the distribution of State school funds to localities.

VIRGINIA (Contd.)

22-285 When Insurance Required and Amount Thereof

(1) Every vehicle so used shall be covered in a policy of public liability and property damage insurance, issued by an insurance carrier authorized to transact business in this State, in the amounts of at least fifteen thousand dollars for injury, death, to one person, one hundred thousand dollars for injury, including death, to all persons injured in any one accident, and five thousand dollars for damage, including destruction, to the property of any person, other than the insured.

(2) The insurance so effected is to be subject to all laws of this State regulating insurance.

(3) This insurance is not required in cases when pupils are transported on a common carrier if it be covered by a policy of insurance affording substantially the protection required by this article.

The 1958 amendment substituted "fifteen and "one thousand" for fifty thousand" for "five thousand" in line four, "thousand" in line five.

22-286 Amounts where less than ten pupils regularly transported.

In any case in which a vehicle used for transportation of school pupils and personnel regularly transports less than ten pupils the policy of insurance may be in amounts of (1) fifteen thousand dollars for injury, including death, to one person, (2) fifty thousand dollars for injury, including death, to all persons in any one accident, (3) one thousand dollars for damages, including destruction, to property of any person except that of the insured, and shall be subject to other provisions of this article.

The 1958 amendment substituted "fifteen thousand" for "five thousand" in clause (1) and "fifty thousand" for "twenty-five thousand" in clause (2). The amendment also substituted "person" for "child" in clause (1).

22-287 When Superintendent of Public Instruction to obtain insurance.

In every case in which a locality or its school board fails to obtain, or to require vehicles operated under contract with it to be covered by, the requisite insurance, by the first of August of any year, or fails to notify the Superintendent of Public Instruction of the effectuation of requisite insurance on or before the tenth of August, it shall be the duty of the Superintendent of Public Instruction, on or before the tenth of September, to obtain insurance complying with the requirements of this article on all vehicles to be used, as far as known to or reasonably ascertainable by him, for school pupil and personnel transportation in the ensuing session, and to expend for this purpose the requisite amount out of any State school funds otherwise distributable, or becoming distributable, to the particular locality so in default.

22-288 Injury and damage covered by policy. Every policy of insurance issued in pursuance of the provisions of this article, in addition to compliance with other requirements of this article and with the requirements of other applicable laws, shall cover:
(1) Injury, including death, to school pupils and personnel except the driver when not a pupil, riding as passengers on any of the vehicles so insured when used to transport such persons at public expense; pupils and personnel shall include school bus patrolmen when performing duties either in or outside of the bus as prescribed by the State Board of Education;
(2) Injury, including death, to any persons not passengers on any such vehicle;
(3) Damage, including destruction, to property of any person, other than the insured.
The 1962 amendment substituted, following the word "persons" in subsection (1) the words "at public expense" for the words "to or from any school at which they are required to be by State law or school regulations." The amendment also added to subsection (1) the provision as to school bus patrolmen.

22-289 Sufficiency of proff in action on policy; guest doctrine not applicable. In case any school pupil or personnel except the driver when not a pupil, whether riding in the vehicle or not, or any other person suffers injury, including death, or property damage, including destruction, through the ownership, maintenance, use or operation of the vehicle it shall be sufficient, in an action for recovery upon the policy, to prove such facts and circumstances as are required to be shown in order to recover damages for death or injury to person or property, caused by the negligent operation of privately owned motor vehicles, in Virginia; provided that such pupils and personnel shall not be considered as guests and 8-646.1 shall not apply to them.

22-290 Liability of locality or school board owning or operating vehicle.
In case the locality or the school board is the owner, or operator through medium of a driver, of, or otherwise is the insured under the policy subject to action up to, but not beyond, the limits of valid and collectible insurance in force to cover the injury complained of and the defense of governmental for damages arising out of a single accident involving the vehicle, the claims of pupils and school personnel excluding driver when not a pupil shall be first satisfied, but in no event shall school funds be used to pay any claim or judgement or any person for any injury arising out of the operation of any such vehicle. The locality or school board so responsible may be sued alone, or jointly with the driver provided that in no case shall any member of a school board be liable personally in the capacity of school trustee solely.

22-291 Recovery where vehicle operated under contract
In case the vehicle involved is not owned by the locality or school board but is operated under contract with the locality or school board and is involved in an accident, recovery may be had as provided for in 22-289.

LIABILITY OF SCHOOL TEACHER - Crabbe v. County School Board of Northumberland County and Bobby Lee Albrite -Va.-164 S.E. 2nd 639, 1968.

Crabbe, a student at Northumberland High School, operated by the School Board, was receiving instruction from Albrite, a teacher, in the use of a power table saw. During such instruction, Crabbe injured his hand and filed suit against the School Board and Albrite alleging that the saw was defective, etc. and that this was known to Albrite.

The School Board filed a special plea of governmental immunity and Albrite also filed a special plea contending that this immunity extended to him as an employee. The lower court upheld the pleas and dismissed the suit.

The Supreme Court of Appeals held that while the School Board was immune from suit, Albrite, the teacher was not.

In the absence of a statute waiving its governmental immunity, the School Board is immune from liability by reason if its alleged negligence and that of the instructor, Albrite. Crabbe had contended that Virginia Code Section 22-284-22-294 inclusive had waived this immunity but since these sections referred to vehicles used to transport children, the court ruled it did not waive immunity in the instruction involved here. Those sections required liability insurance to be provided on the school vehicles, but there was not requirement for insurance coverage in the present situation.

As far as Albrite's liability is concerned, the court referred to prior decisions that a state employee may be held liable for negligent conduct in the performance of his duties, although the State itself is immune from liability by reason of such acts of its employee.

The case was remanded for a new trial as to Albrite.

WASHINGTON - SUPERINTENDENT OF PUBLIC INSTRUCTION

The doctrine of sovereign immunity has been completely discarded by statute within the State. Until the 1967 session of our State Legislature, school districts, enjoyed partial immunity from suit: when an accident occurred upon a playground, in a manual training shop, in a park, or in connection with the use of athletic apparatus.

The Statute authorizing such partial immunity was repealed in its entirety in 1967 and presently all of our municipal corporations, quasi municipal corporations, and subdivisions of government are responsible for the tortious acts of their agents and employees in the same manner as private citizens.

WEST VIRGINIA - DEPARTMENT OF EDUCATION

1. School districts in West Virginia have governmental immunity for tort liability.

2. This immunity applies only to governmental acitivites.

3. Board members and employees are included in the immunity statute.

4. The immunity provision is written in the constitution of the State of West Virginia.

5. This immunity applies to pupil transportation. All the counties carry insurance on school buses for injury to children in this state. Also, the counties are permitted to carry liability insurance and general for all functions provided the insurance company does not use the immunity statute as a defense against the suit.

WISCONSIN - DEPARTMENT OF PUBLIC INSTRUCTION

895.43 Tort actions against political corporations, governmental subdivisions or agencies and officers, agents or employees; notice of claim; limitation of damages and suits. (1) No action founded on tort, except as provided in s. 345.05, shall be maintained against any volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency thereof nor against any officer, official agent or employee of such corporation, subdivision or agency for acts done in their official capacity or in the course of their agency or employment unless within 120 days after the happening of the event causing the injury or damage or death complained of, written notice of the time place and circumstances of the injury or damage signed by the party, his agent or attorney is served on such volunteer fire company, political corporation, governmental subdivision or agency and on the officer, official, agent or employee under s. 262.06. Failure to give the requisite notice shall not bar action on the claim if the fire company, corporation, subdivision or agency had actual notice of the damage or injury and the injured party shows to the satisfaction of the court that the delay or failure to give the requisite notice has not been prejudicial to the defendant fire company, corporation, subdivision or agency or to the defendant officer, official, agent or employee.

(2) The amount recoverable by any person for any damages, injuries or death in any action founded on tort against any volunteer fire company organized under ch. 213, political corporation governmental subdivision or agency thereof and against their officers, officials, agents or employes for acts done in their official capacity or in the course of their agency or employment, whether proceeded against jointly or severally, shall not exceed $25,000. No punitive damages shall be allowed or recoverable in any such action.

(3) No suit shall be brought against any political corporation, governmental subdivision or any agency thereof for the intentional torts of its officers, officials, agents or employes nor shall any suit be brought against such fire company, corporation, subdivision or agency or against its officers, officials, agents or employes for acts done in the exercise of legislative, quasi-legislative, judicial or quasi-judicial functions.

WISCONSIN (Contd.)

(4) Except as hereinafter provided, the provisions and limitations of this section shall be exclusive and shall apply to all actions in tort against a volunteer fire company organized under ch. 213, political corporation, governmental subdivision or agency or against any officer, official, agent or employe individually for intentional torts. When rights or remedies are provided by any other statute against any political corporation, governmental subdivision or agency or any officer, official, agent or employe thereof for injury, damage or death, such statute shall apply and the limitations in sub. (2) shall be inapplicable.

WYOMING - OFFICE OF THE ATTORNEY GENERAL

1. An employee of a school district or other school organization may be held personally liable for his or her torts committed in the course of his or her employment with the school district.

2. In the absence of a statute imposing liability, it is generally held that a school district or other local school organization is not liable for injuries resulting from the negligence or other tortious conduct of its officers, agents, or employees, committed in the exercise of their powers or the performance of their duties.

3. Sections 21-155 through 21-159.2, Wyoming Statutes 1957, as supplemented and amended, authorize school districts to obtain insurance policies which provide accident, medical hospital, injury or death benefits for any and all pupils engaged in organized athletics, and to save harmless and protect all teachers and members of supervisory and administrative staff from financial loss arising out of any claim, demand, suit or judgement by reason of alleged negligence or other act resulting in accidental bodily injury to any person within or without the school building, and to provide health insurance, life insurance and other fringe or employment benefits of all types for teachers, administrative personnel and other employees of the school district which the Board deems to be in the best interest of the school district.

The above statutes were specifically referred to in the case of Maffei vs. Incorporated Town of Kemmerer (April 21, 1959, 338 P2d 808), where the Wyoming Supreme Court, in referring to the above sections of the Wyoming School Code, to-wit, Sections 21-155 through 21-159, stated:

"... by giving this express authority to obtain insurance, the strongest implication arises that the means of realizing the benefits of such policies were also intended to be granted. To this end the legislative waiver of the district's immunity was implied in order that the entitlement of all concerned, whether in benefit or protection, might be determined. The logical conclusion therefore, is not that the acts mentioned give recognition that governmental elements are not possessed of immunity from tort action, but rather they do not have an immunity which the legislature has seen fit to waive to the extent of subjecting them to a liability limited to moneys made available from insurance. We do not have any statute which by implication, or otherwise, authorizes or permits a town to obtain liability insurance of the kind pleaded in this action, nor has any decision of this court to that effect been called to our attention."

WYOMING (Contd.)

Section 21-159, Wyoming Statutes 1957, specifically states:

"This act (21-158, 21-159) shall not be construed as creating or tending to create a liability of the school district so protecting or insuring its teachers or staff members, nor shall the failure to procure such insurance as is authorized by this act be construed as creating any liability of the school district..."

Reading the above statute in conjuction with the above quoted language from the Maffei case, supra, I therefore conclude that the school districts proper in the State of Wyoming are immune from civil liability for injuries resulting from the negligence or other tortious acts or conduct of the teachers, officers, agents or employees of the school district proper, in the exercise of their powers or the performance of their duties.